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JOURNAL ON THE RIGHTS OF THE CHILD OF NATIONAL LAW UNIVERSITY ODISHA

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10TH ANNIVERSARY SPECIAL EDITION

National Law University Odisha, Cuttack
(Established by Act 4 of 2008)

JOURNAL ON THE RIGHTS OF THE CHILD OF NATIONAL LAW UNIVERSITY ODISHA

VOLUME VI **ISSUE I** **APRIL 2025**

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The *Journal on the Rights of the Child of National Law University Odisha*, is the flagship journal of Centre for Child Rights (CCR) – National Law University Odisha (NLUO) initiated in the year 2016.

Since inception up to 2020, the journal was published in print form and this year the centre is relaunching it in April 2025 after a post pandemic hiatus. This journal is now a digital-only publication, open access mode. It is double-blind peer reviewed, biannual publication published under the aegis of the Registrar, National Law University Odisha.

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NATIONAL LAW UNIVERSITY ODISHA
CENTRE FOR CHILD RIGHTS

ABOUT THE CENTRE

Centre for Child Rights (CCR) is the oldest specialized research centre of the National Law University Odisha (NLUO), Cuttack founded on April 12, 2015 with ceremonial inauguration by Hon'ble Justice Dipak Misra, former Chief Justice of India and Visitor, NLUO in the august presence of the Hon'ble Chief Justice and Judges of Orissa High Court, and Secretary, Department of Women and Child Development, Government of Odisha. The Centre aims at building a rights temper amongst the children and the society, strengthening law and justice for children and child wellbeing by supporting and initiating research, policy advocacy and community action on children's issues. The Centre aims to provide integrated support and consultancy to different layers of institutional governance for protection and insurance of child rights, child protection, understand and reform enabling and disabling factors to furthering child rights and the inter-sectionalities.

The Centre is led by the Chief Minister's Chair Professor, which is the first ever Chair Professor on Child Rights amongst any Law University in India. It has been harnessed by the **Hon'ble Vice Chancellor of NLUO, Prof Ved Kumari,** one of the most important chroniclers of Child Rights and Juvenile Justice in the world. She is also the Patron-in-Chief of the CCR at the NLUO.

The Hon'ble Chief Minister of Odisha sanctioned the Chair Professor in June 2023 which has a sanctioned strength of five (the Chair Professor, two senior researchers, one office assistant and one support staff). While the CCR is the oldest research centre at the NLUO, like other NLUs hosted CCRs, it was limited to juvenile justice mandate only. Prof Ved Kumari recognised the importance of having a centre dedicated to the comprehensive agenda of child rights, from the concept of childhood, child well-being, child rights (child participation, civil and political rights, economic, social and cultural rights), inequalities and externalities that affect children's life chances and how children and their issues were reported in the media. The mainstream discourse and children, their parents, educators, society's stake and engagement in the same bore an important stake for Prof. Ved Kumari too. And this vision shaped the Chief Minister's Chair Professor for Child Rights.

CCR's journey so far:

The Centre has been actively engaged in research, capacity-building training, and

policy advocacy since its establishment in 2015. In collaboration with UNICEF, the Ministry of Women and Child Development (W&CD), Government of Odisha, and other organizations, CCR has undertaken several initiatives under the leadership of the respective Director and Co-directors.

Over the years, CCR has conducted significant programs and consultations aimed at strengthening child rights and juvenile justice systems. In 2023, the Centre held a consultation on the Juvenile Justice (Care and Protection) Amendment Bill, 2021. An awareness program on the UN Convention on the Rights of the Child, 1989, was conducted in 2022 for students of The Kalinga English Medium School. Earlier, in 2019, CCR organized a symposium on Legal Education and Policy Research on Child Rights. The year 2018 saw the training of newly appointed chairpersons and members of Child Welfare Committees in Odisha, along with a Judicial Colloquium on Juvenile Justice. In 2017, a sensitization workshop on human rights awareness was conducted for police personnel from the Human Rights Protection Cell across various districts in Odisha. Similarly, in 2016, CCR provided training for district-level officers of the Special Juvenile Police Units in Odisha, focusing on the Juvenile Justice Act, 2015, and its model rules. Additionally, capacity-building workshops were conducted on the roles and accountability of public prosecutors in ensuring justice for children, and a consultation meeting was held on the Draft Model Rules 2016 for the Juvenile Justice Act. In its foundational year, 2015, the Centre organized an orientation program on child rights and juvenile justice for district-level officials, non-judicial members of Juvenile Justice Boards, and Legal cum Probation Officers.

Alongside these initiatives, CCR has contributed significantly to research and publication in the field of child rights and juvenile justice. One of its key studies assessed the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000, in Odisha, supported by UNICEF under the project 'Effective Implementation of Children's Laws in Odisha.' Another study examined the pendency of juvenile cases in Odisha with support from UNICEF, Bhubaneswar. Furthermore, CCR explored the practice of preliminary assessment under the Juvenile Justice (Care and Protection of Children) Act, 2015, through research on the functioning of Juvenile Justice Boards in Odisha. With the support of the Indian Council for Social Science Research (ICSSR), New Delhi, the Centre undertook a study on the changing dynamics of children's laws in India in the post-liberalization era. Another important project involved social mapping of migrant workers in Odisha, conducted in collaboration with the Labour Department, Government of Odisha.

The Centre has also made substantial contributions to academic literature. A notable publication is the booklet series on the United Nations Convention on the Rights of the Child (UNCRC), consisting of 44 books, each dedicated to an article of the UNCRC, creatively illustrated and drafted by NLUO students. Additionally, CCR published the Journal on the Rights of the Child, releasing the Volume-I, Issue 1 in 2016. Other notable publications include a booklet on the role of district administration in preventing and combating human trafficking and a booklet on frequently asked questions regarding the Juvenile Justice (Care and Protection of Children) Act, 2015.

Through its extensive research, training, and publications, CCR has played a significant role in strengthening child rights jurisprudence, raising legal awareness, and influencing policy advocacy in Odisha and beyond. The Centre continues to be a driving force in child rights protection and juvenile justice reform.

The CM's Chair Professor on child rights at the CCR-NLUO from 2024 onwards has expanded and transformed the mandate that other universities and all child rights' related stake-holders can learn in lexis and praxis. The current mandates are:

- **Expansion of remit and definitions:** The CM's Chair Professor has expanded the remit of the centre from merely "juvenile justice" to comprehensive child rights, and child wellbeing with focus on inter-sectionalities
- **Inter-disciplinary and diverse POV (Point on View):** Diverse disciplines of Sociology, Social Work, Economics, Journalism and Political Science and diverse sectoral experience is now integrating with law to foreground and optimise the child rights' discourse, policy, practise and law
- **Deepening citizens action and state responsiveness to establish Child-Friendly Communities:** KUTUMB, the flagship outreach programme of NLUO dedicated to creating active citizens and effective State, is also focussing on building child friendly communities and habitats, as per the United Nations' Sustainable Development Goals (UN SDGs) commitment and NITI Ayog mandates. The CM's Chair Professor team brought the interdisciplinary expertise of Social Work, Sociology, Economics, Public Administration and Citizens' Action to deepen the intervention and make child-friendly communities a reality
- **Fit-for-purpose, innovative courses being curated with expanded mandate, praxis and lexis focus, experiential learning, industry-ready skills and career growth prospects:** The courses curated i.e. *Child Rights*

Paper has evolved into a comprehensive agenda of the child rights and child well-being and determinants and not just on Juvenile Justice, as it is practiced in most of the Universities (law and non-law). Similarly, the *Food and Nutrition Justice Paper* is first of its kind in any legal university of India. These papers are now offered at senior classes i.e. 7th Semester and 10th semester respectively. These papers focus on praxis and lexis and on career growth with experiential learning. *Additionally, a mentorship programme is being curated and (will hopefully be regularised) to build the child protection capacities of early career professionals on everything child protection comprehensively*

- **Deepening engagements with existent and new stakeholders (State and non-state actors):** Historically the Juvenile Justice Committee and the Women and Child Department has been the only nodal of the child rights centres and child rights practitioners, but this Chair Professorship has started deepening engagement with the Women and Child Development Department (W&CD), School & Mass Education Department (SME), Social Security and Empowerment of Persons with Disability (SSEPD) and International NGOs dedicated to child rights and well-being, UN agencies (UNICEF and other UN and multi-government agencies) etc
- **Furthering child rights' agenda through expansion of stakeholders:** Now the stakeholders are not just the usual Juvenile Justice Boards and Child Welfare Committees, but everyone including parents, schools, media, JJBs, CWCs, State and its instruments represented through bureaucrats, protection officers and other officials, Judges, academics and researchers
- **Public education and shaping the discourse:** The CM's Chair Professor is attempting to shape the discourse, build public awareness via media engagement like Opinion pieces, think pieces, awareness programming etc
- **Building media literacy and demanding better journalism on children's issues:** Building capacities of budding law and justice professionals to demand and consume better journalism around children, their rights and well-being and the determinant sectors
- **Creating a range of knowledge products and aggressively working to make them accessible to one and all:**
    - Non-fiction, text-book co-authored by faculty and students which is an outcome of a classroom project focussed on seeing and empathy and building resolution via legal lens
    - Funbooks i.e. an explainer series on UNCRC article for non-law literate children and adults

- Scanning the media for "children in news" using the Unicef-Presswise lens and the AK Asthana judgement
- Starting the first ever newsletter of the centre
- Reviving the flagship journal on the rights of the child etc
- Making every publication open source, digital and amplifying them through social media handles to outreach and access

- **Foraying into new areas examination/recruitment of apt personnel in the child protection space**: Via recruitment paper setting for the Public Service Commission's exams for the Bihar CWC and JJB cadre
- **The CM's Chair Professor team is an inherently diverse team with diverse disciplinary trainings and diverse worldview to further the agenda of child rights**

VISION

To build a child rights' temper, ensure rights, justice to the children anywhere and everywhere (irrespective of caste, class, creed, race, economic status) and promote effective implementation of children's laws and governance in the State of Odisha, forge national and global collaborations, research and understand enabling and disabling externalities and inter-sectionalities and recommend/support reforms. The Centre will endeavour to create pro-children discourse and mechanisms and promotion of child rights practices.

MISSION

To support and strengthen child rights discourse, child protection structures by leveraging knowledge change and policy reforms at various levels of institutional governance to make child rights access a reality, juvenile justice system more accountable, efficient and effective for protecting and promoting child rights.

OBJECTIVES

The objectives of the centre are dynamic, and evolving in a dynamic world. Currently the objectives of the CM's Chair Professor led CCR are:

- Spread and enhance legal literacy and building a rights-based temper
- Periodic studies/assessment of core laws/policies/legal provisions and flagship programmes translating the laws on ground with reference to the institutional preparedness i.e. 'Juvenile Justice (Care and Protection) Act, 2015' (JJ (C and P) Act 2015), Juvenile Justice Board (JJB), 'Protection of Children from Sexual Offences Act, 2012' (POCSO Act, 2012), Children in conflict with Law (CiCL), Children in Need of Care and Protection

(CNCP), State Commission for Protection of Child Rights (SCPCR), District Child Protection Unit (DCPU), Village Level Child Protection Committee (VLCPC) etc.

- Capacity building on everything juvenile justice and child rights
- Collaboration with other National Law Universities, Law Universities, Centre for Child Rights and other Universities, agencies and organisations, locally, nationally and globally on the issues of child rights
- Guidance and consultancy to strengthen law, policy and governance to improve child rights, child well- being and welfare
- Advocacy and collaboration with State and non-state actors w.r.t. emergent reforms
- Curating and running the NLUO Child Rights Course, Food and Nutrition Justice Course.
- Enhance experiential learning by conducting research for evidence-based advocacy
- Research dissemination via conferences and public advocacy
- Improve access to justice for children in areas of juvenile justice, child labour, children's health, education, etc.
- Collaborate with and building journalistic perspective for better and more coverage of child rights and their determinant issues

Chief Minister's Chair Professor cum Director, CCR-NLUO	**:**	Prof Biraj Swain
Researcher, CCR Team Member	**:**	Dr Swagatika Samal
Researcher, CCR Team Member	**:**	Dr Pradipta Kumar Sarangi
UNICEF Consultant to the CCR-NLUO	**:**	Mr Ankit Kumar Keshri
Co-Director, CCR-NLUO	**:**	Dr Rashmi Rekha Baug
Co-Director, CCR-NLUO	**:**	Dr Shubhanginee Singh
Office Assistant	**:**	Mr Amulya Kumar Swain

ABOUT NATIONAL LAW UNIVERSITY ODISHA

The National Law University Odisha (NLUO) was established in the year 2009 under The National Law University Orissa Act, 2008 (Act 4 of 2008) passed by the Odisha State Legislature and commenced its academic activities in the academic year 2009-10. The University has received recognition from the University Grants Commission (UGC) under Section 12(B) of the UGC Act, 1956, and has been receiving grants under the XIIth Plan. The degrees offered are recognised by the Bar Council of India. It is also an associate member of the UGC-INFLIBNET, and a participant in the National Knowledge Network under the Ministry of Information Technology and Communication, Government of India.

In the 1970s, the Bar Council of India envisioned a premier institute for legal education, culminating in India's first National Law School in Bangalore. This model revolutionized legal education, producing skilled transactional lawyers. However, it fell short in enriching the Bench and Bar, with issues like outdated curricula and limited encouragement for litigation careers. Recognizing these gaps, NLU Odisha was established to provide socially relevant legal education, integrating interdisciplinary learning and practical training. Its goal was to bridge the divide between legal academia and practice, fostering a new generation of lawyers committed to justice, policy-making, and transformative legal scholarship. In words of the founding Vice Chancellor, Prof. Dr. Faizan Mustafa, NLUO doesn't aim to provide only 'legal education' but also provide 'justice education'. It is in view of these specific objectives, that the academic programme and curriculum at NLUO is designed.

Within a short span of time, NLUO has made its mark as a University engaged in imparting socially relevant education. NLUO is ideally placed to learn from other law schools both in terms of their strengths and drawbacks. Drawing from these experiences, it has embarked upon a well-structured course of action to achieve levels of excellence.

Students at NLUO are trained by a group of experienced, dynamic, young and most significantly committed teachers. The curriculum development and framing process offers academic flexibility and promotes an environment which allows exchange of intellectual thought process.

The amicable environment hones not just the students' intelligence, but also their emotional quotient. The level of academic rigour has ensured that most of our alumni excel in their profession. Beyond academics, NLUO promotes leadership skills and the wholesome life experience of our students by encouraging them to take part in various co-curricular and extra-curricular activities like literary, debating, cultural, entrepreneurial and recreational activities.

In its attempt to make the learning process contemporary and relevant, every stakeholder is encouraged to make optimum use of technology. Students are prompted to think out of the box and there exists a dedicated team of students and faculties to discuss and nurture start-up and other entrepreneurial ideas.

Justice Harish Tandon
Chief Justice

सत्यमेव जयते

High Court of Orissa
Chandini Chowk, Cuttack-753002

7th April, 2025

MESSAGE

It gives me immense pleasure to know that the Centre for Child Rights (CCR) of NLUO is going to celebrate ten years of its inception on April 12, 2025, and on re-launching their flagship journal, ***"Journal on the Rights of the Child".*** I come to know that the CCR has been at the forefront of inter-disciplinary action research foregrounding children and their best interests in every aspect.

The upbringings of children in a congenial atmosphere not only shape the mind but make the children the integral part of the orderly society; above all a responsible citizen of the country. The impact of adverse experiences is deeply rooted and imprinted in the mind of children impeding the growth and the development which every child aspire in future.

I have been informed that CCR has done exemplary work towards vulnerability mapping of communities and recognizing several stakeholders including parents, community, care givers, child rights institutions, village local bodies and government for implementation of children's voice and agency, child friendly initiatives and their capacity building.

Children who have adverse childhood experiences, fall off the social security net are most likely to come in conflict with law and need special care and protection for their rehabilitation. I feel there is a need to strengthen the family, educational, and community institutions in our society to protect childhood.

I am hopeful that the journal will provide a reflection on rights of the children.

I wish the CCR and its journal on the Rights of the Child immense success.

Harish Tandon

(Justice Harish Tandon)
Chief Justice, Orissa High Court
&
the Chancellor, National Law University Odisha

Chief Justice's Residence, Cantonment Road, Cuttack-753001

Justice Savitri Ratho
Judge, Orissa High Court.
Chairperson, Juvenile Justice Committee

MESSAGE

It is heartening to note that the Centre for Child Rights (CCR), National Law University, Odisha (NLUO), Cuttack is relaunching its flagship journal - the Journal on the Rights of the Child of National Law University Odisha, on the occasion of its 10th anniversary.

CCR, which was established on 12th April, 2015, has made remarkable strides over the past decade and has become a beacon of hope and a catalyst for change in the realm of child rights.

Over these years, CCR's endeavours have been both diverse and impactful. Its vision to initiate dialogue on various issues concerning child rights and ensure justice for children, irrespective of their background, is in sync with the broader objectives of the constitutional mandate.

I hope, the relaunch of the journal, will not be merely a celebration of past achievements of CCR, but should also be a call for action in the future. The journey towards ensuring the rights and well-being of every child should continue.

My best wishes to the CCR, NLUO, and the Journal on the Rights of the Child of National Law University Odisha.

S Ratho

Savitri Ratho

Judge, Orissa High Court

Cuttack

5th April, 2025

Message from Hon'ble Justice Gita Mittal

I am elated to extend greetings and congratulations to the Centre for Child Rights (CCR) at National Law University Odisha (NLUO) on the occasion of its 10th anniversary and the re-launch of its flagship journal, *The Journal on the Rights of the Child,* after a five-year hiatus.

Child rights law stands at a crucial juncture. It is now called on to answer questions of how best to protect children from sexual offenses, address their vulnerabilities in digital spaces, and develop a balanced approach to technology which can leverage its potential to safeguard children while limiting exposure to its harms. Meanwhile, the traditional questions around children's fundamental rights to nutrition and education and laws regarding adoption, custody, and visitation are still far from having satisfactory answers, and always in need of fresh approaches.

As a member of the Editorial Advisory Board of the *Journal on the Rights of the Child,* I am confident that these critical issues will be thoroughly and maturely analysed in its pages. This journal is vital in ensuring that the issues surrounding children's rights are discussed not just from an academic perspective, but also from the practitioner's lens. It is trite to repeat Oliver Wendell Holmes's dictum that "the life of the law has not been logic; it has been experience." In few areas is this truer than in child rights, where the gap between text and context can sometimes feel like a chasm. With its commitment to studying the real-world impact of laws, their interpretation, and implementation, this journal has gone a way to bridging that gap.

In my decades of experience working in the justice system, I have witnessed the increasing number of cases involving child sexual abuse and violence against children. It has become evident that the imperative need for our justice system and courtrooms must place the best interests of children centre-stage. My work in Manipur has brought me face to face with the challenges faced by displaced women and children residing in relief camps. While the tragedy is palpable, the

stories of hope and perseverance I have encountered are equally remarkable. It is thus heartening that the re-launch edition of the journal includes a paper on the rights of refugee / displaced children as well.

We are still a long way from achieving a justice system that truly safeguards and empowers child victims and witnesses. Child victims and witnesses are among the most vulnerable groups I have encountered. This realization, along with the understanding of how many others also require a protected environment within the justice system, led me to spearhead what is now a nationwide initiative on Vulnerable Witness Deposition Centres. The Centres bring together key stakeholders ranging from nodal officials, legal professionals, police, health experts and members of the judiciary to academics, children, and their families. The importance of this scheme is essential in driving meaningful reforms in child rights and the juvenile justice system, both in Odisha and across India. Odisha's commitment to the scheme is evident in the High Court of Orissa's Guidelines for Recording Evidence of Vulnerable Witnesses and Functioning of Vulnerable Witness Deposition Centres, issued in 2024.

Child rights are fundamental to ensuring a child's development, well-being, and protection from harm. International conventions, such as the United Nations Convention on the Rights of the Child (CRC), ratified by India in 1992, mandate that children should be protected from exploitation, violence, and neglect. They also aim to ensure children's access to quality education, healthcare, and a safe environment for growth.

In India, despite significant progress, challenges persist. According to a response to a parliamentary question, 1,62,449 crimes against children were reported during 2022, highlighting the vulnerability of children to abuse, trafficking, and exploitation. Moreover, India has one of the largest number of child labourers in the world, with millions of children working in hazardous conditions, depriving them of their right to education and a healthy childhood. The importance of child rights lies in their ability to provide a legal and ethical framework to address these issues, ensuring that children not only survive but thrive and are given the opportunities they deserve for a better future.

NLUO has made significant contributions to advancing the discourse on child rights under the esteemed leadership of one of the foremost experts in juvenile justice, Prof. Ved Kumari. The endowment of the Chief Minister's Chair Professorship in Child Rights is a landmark moment demonstrating the institute's commitment to child rights law.

As the Centre enters a new Chapter, it has a unique opportunity to shape the discourse on emerging child rights issues in a post-pandemic world. The re-launched journal can play an instrumental role in drawing attention to critical concerns such as the economic, social, and cultural rights of children (ESCR), the protection of children in conflict with the law, child trafficking, and the growing issue of online abuse.

I would encourage CCR to also explore further collaborations with the State Legal Services Authority, particularly in raising awareness among marginalized children about their rights and the legal consequences of their actions. Such initiatives could lead to the development of new practices and benchmarks to ensure children receive the care, opportunities, and support they deserve. I am confident that under the continued stewardship of Vice Chancellor cum Patron-in-chief Prof. Ved Kumari and the Chief Minister's Chair Professor Biraj Swain, the CCR and its flagship journal will remain at the forefront of shaping policy, practice, and discourse, ensuring that the rights of children in Odisha and beyond are placed at the core of all social and legal frameworks.

I extend my best wishes to CCR, NLUO and the Journal immense success in all their future endeavors.

Justice Gita Mittal
Former Chief Justice, Jammu and Kashmir High Court
Former Acting Chief Justice, Delhi High Court
Member, Editorial Advisory Board, Journal on the Rights of the Child of National Law University Odisha

K.Chandru

Retd.Judge
High Court: Madras

Message from Hon'ble Justice K Chandru

I extend my warmest congratulations to the Centre for Child Rights (CCR) of the National Law University Odisha (NLUO) on its 10th anniversary on April 12th, 2025 and the re-launch of its flagship journal, the ***Journal on the Rights of the Child of National Law University Odisha***. The Journal is an important step in continuing the CCR's important legacy of intersectional research and advocacy on children's rights in the context of juvenile justice.

I have dedicated my life to access to justice, especially justice to the most marginalised and vulnerable. Children are a product of their contexts and life stories, hence it is important that the State and its instruments and the judicial system doesn't just focus on children's crime stories but their life stories leading to the reasons/trigger that brings them in conflict with law.

I am aware that NLUO is being led by Vice Chancellor Prof Ved Kumari, one of the most important voices in juvenile justice in the world. Thanks to her efforts, the NLUO-CCR has also established its first ever Chief Minister's Chair Professor on Child Rights which enables the CCR with core trans-disciplinary expertise and human resources to push the discourse of child rights in all its forms and shine a light on the determinant sectors too.

As the head of the committee assessing the functioning of state-run homes under the Juvenile Justice (Care and Protection of Children's) Act 2015 in Tamil Nadu, last year, I bore witness to the conditions of the children's

homes, had extensive interactions over the reforms required in the existing structures of the state for keeping *children in conflict with law* with rehabilitation and fresh start as focus. It needs to start with an overhaul in infrastructure and care management to make these homes more hospitable for children in the juvenile justice system instead of prisons. A lot needs to be done in juvenile homes to ensure that children have a healthy childhood with nutritious food, safe and good living conditions, and adequate arrangements for recreation, play and education through libraries and hope, hope for a better life ahead!

CCR, with its experience in engaging and training with juvenile justice system stakeholders and engaging with champions of child rights, can make significant strides in advocacy and policy recommendations. Addressing these issues through the Journal is a step towards deliberating and making constructive suggestions. As the Journal is being re-launched, it is crucial to explore the evolving challenges faced by children in conflict with law, children at the cusp of multiple deprivations, children's portrayal in media, children's economic, social and cultural rights (ESCR) particularly in relation to child abuse and neglect, and their rehabilitation.

I understand the journal has received submissions from a diverse range of stake-holders, academics, scholars, practitioners alike, and also in diverse range i.e. original research papers, perspective articles, case commentaries, legal analyses et al.

I look forward to the CCR's and the Journal's continued success and its identity as a credentialed reference point for everyone in the field of child rights, justice and beyond!

Chennai

K.Chandru

02.04.2025

juristische | fakultät

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31.03.2025

Message from Prof Bernd-Dieter Meier

It gives me immense pleasure that the Centre for Child Rights (CCR) at the National Law University Odisha (NLUO) is celebrating its 10th anniversary along with the re-launch of its flagship journal, the Journal on Child Rights of the Child of National Law University Odisha on April 12th, 2025. This is personal not just because I am on the editorial advisory board of the journal but because of the inclusive and expansive definition of child rights the CCR has and their attempts to engage in all aspects of child rights through lexis and praxis.

As an academic, I have dedicated my career to criminal law, criminal procedure, and juvenile justice. My early research on the sentencing of the recidivists in Germany and the USA, helped me understand the complexities navigating the criminal justice system. Thus throughout my career, I have endeavored to use empirical research to design practical interventions with the goal of bringing positive reforms in the lives of affected individuals and families. It is heartening to see that CCR has also adopted a similar approach. The upcoming studies on exploring the intersection of disabled children and the juvenile justice system is one such example.

The re-launch of the ***Journal on the Rights of the Child...*** is both timely and imperative. In an era where children face multifaceted challenges—from cyber exploitation to socio-economic disparities, this journal serves as an important reminder of the intersectionalities that shape our lives and the need for undertaking inter-sectional research, disseminating research findings, fostering dialogue, and influencing policy reforms.

The 10th anniversary of the CCR is not just a celebration of past achievements but also a call to action, a call for continued dedication. It is a reminder that the pursuit of justice, especially for our children, is an ongoing journey—one that requires unwavering commitment, collaborative efforts, and an unyielding belief in the transformative power of education and research.

I extend my heartfelt congratulations and best wishes to the Vice-Chancellor of NLUO, Professor Ved Kumari, the Chief Minister's Chair Professor on Child Rights team and the entire team of the Centre for Child Rights (faculty and students), and the entire National Law University Odisha community!

Prof Bernd-Dieter Meier
Director of Criminal Justice
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Member, Editorial Advisory Board, Journal on the Rights of the Child of National Law University Odisha

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Message from Prof Ravinder Barn, PhD, FAcSS

The Centre for Child Rights (CCR) is the oldest research centre of the National Law University Odisha (NLUO). Since its inception, the centre has been working tirelessly on an inclusive and expansive definition of child rights.

My extensive association with NLUO as a visiting professor, the discourse of child rights in all its aspects and also shifting the gaze on determinant sectors including migration, poverty, nutrition, and public finance/ budget allocation. Prof coupled with my modest role in enabling NLUO and Odisha host the first ever International Society for Child Indicators (ISCI) conference in 2024 and my subsequent participation in the same, introduced me to the significant ambitions of CCR in advancing Ved Kumari, the Vice Chancellor of NLUO and Patron-in-Chief of CCR has been a collaborator and comrade on making justice accessible to every child in the world irrespective of their contexts, geographies and backgrounds.

I congratulate the CCR on the successful re-launch of their flagship journal, the Journal on the Rights of the Child of National Law University Odisha. As the Centre for Child Rights is entering the pivotal phase of its development under the aegis of the first ever Chief Minister's Chair Professor, thanks to the efforts of Prof Ved Kumari and the government of Odisha, I believe the relaunch of the journal after a five year hiatus post pandemic, is an essential and timely intervention to cement further its position as the thought and action leader in the field of everything child rights.

It also gives me immense pleasure to see the way the Chief Minister's Chair Professor Biraj Swain and her team are shaping the agenda of the CCR. Their list of achievements and activities is truly impressive and immense - from re-launching the journal to mentoring students to launch a bi-monthly newsletter, to making CCR super active on social media, to making the UNCRC explainers and bringing in champions to engage and inspire as part of the main course for Law students, to curating child rights, food and nutrition justice courses for senior law students and getting those courses heavily over-subscribed to establishing a proof-of-concept of child participation and agency in the neighbouring outreach communities of Kutumb, to publishing Op-Eds in very credentialed media platforms to plug and promote CCR's work and position on various aspects of child rights. Indeed, it gives me enormous pride and pleasure to see the team achieve all that and more, especially considering the team is barely a year old!

My personal research interests in the rights and welfare of children and families allow me to pose this hope in the journal that it will serve as a platform for rigorous academic inquiry and to understand challenges in the legal framework to address the rights of children. I thank the editors, reviewers and contributors for their commitment to furthering the cause of children's rights in India and the world. I hope the journal serves as a lighthouse of motivation and space for collaboration for all those working in the field.

I look forward to reading the latest edition of the journal and collaborating with CCR on its various initiatives. I wish CCR and the journal success and meaningful engagement from one and all!

Prof Ravinder Barn, PhD, FAcSS
Professor of Social Policy and Head of Department of Law and Criminology
Royal Holloway University of London

Message from Prof Enakshi Ganguly

As someone who has given a lifetime to advocating for children's rights, redefining the child protection, advocating for the centrality of children's economic social and cultural rights (ESCR), and as one of the members of the founding team of the Centre for Child Rights (CCR) at the National Law University Odisha (NLUO), I am delighted that the CCR is turning 10 years old on April 12th, 2025. I wish to congratulate the entire NLUO family, especially the team and student members of CCR.

With the leadership of Vice-Chancellor Prof Ved Kumari, a foremost name in juvenile justice with global standing, the CCR has also secured its first ever Chief Minister's Chair Professor on Child Rights. This is also the only fully financed Chair Professor on Child Rights anywhere in India (Law or non-Law Universities included).

I am aware the CCR is offering a Child Rights Course at senior class in the Law programme which is not just limited to juvenile justice and child protection, but actually about the expansive remit of child rights. They are also offering courses on determinant sectors like food and nutrition justice, right to education etc.

Working very closely with the children and young persons having adverse life experiences, more so who come in conflict with law, I have learnt that although progressive laws and judgments are there, the complexity of issues demands sensitive and empathetic people both as decision makers and implementers of the affirmative provisions. This is where CCR's role becomes even more crucial—as a watchdog, a research and practice hub (generating data and demonstrating proof of concept) and a catalyst for change.

The NLUO is not just committed to producing legal professionals but cadre committed to justice and the idea of justice as enshrined in the Indian constitution and when the Chief Minister's Chair Professor of CCR offers courses on child rights, food and nutrition justice, and these courses become the most subscribed by students, it signifies that future leaders are being shaped in the right direction.

To celebrate this memorable occasion, CCR has re-launched its flagship journal, the Journal on the Rights of the Child. I am looking forward to read it and see how it plugs the gap on inter-sectional discourse and also brings in the practitioners' perspectives.

Once again best wishes to the CCR on its 10th anniversary and to the Journal of the Rights of the Child on its re-launch! This does feel personal!

Prof Enakshi Ganguly
Executive Director, Housing and Land Rights Network
Co-founder cum former Executive Director, HAQ Centre for Child Rights
Honorary Professor, National Law University Odisha

FROM THE DESK OF THE EDITOR-IN-CHIEF

It is with immense pleasure that I announce the re-launch of the flagship journal of the Centre for Child Rights (CCR), the Journal on the Rights of the Child of National Law University Odisha. This volume commemorates the 10th anniversary of CCR. It reaffirms NLUO's unwavering commitment to scholarship and advocacy in the field of child rights.

The Centre for Child Rights was established on April 12, 2015 under the leadership of NLUO's then Vice Chancellor, Prof Shrikrishna Deva Rao. It was inaugurated by the Hon'ble Justice Dipak Misra, in the esteemed presence of then Hon'ble Chief Justice of Orissa High Court, Hon'ble Justice Pradip Kumar Mohanty and Judges of the Orissa High Court. Two researchers appointed at the Centre namely, Mr S Kannayiram and Mr Pramoda K Acharya played a sterling role in carrying out many research projects, organising various training programmes and colloquiums, writing policy papers, and conducting action research. NLUO supported these researchers even after the UNICEF support ceased during the Covid Pandemic.

The Centre got a new lease of life with the establishment of the Chief Minister's Chair Professor in 2023 fully supported by two full time researchers and an office support staff. The UNICEF also returned on Board in the same year funding a Consultant in the CCR. Since 2024, the CCR's Chief Minister's Chair Professor cum Director Biraj Swain has infused new energy in the Centre which is now fully functional with Dr Swagatika Samal and Dr Pradipta Sarangi, as the researchers, Mr Amulya Swain as the office assistant, and Mr Ankit K Keshri, as the UNICEF Consultant and NLUO faculty members Dr Rashmi Rekha Baug as Co-Director and Dr Shubhnginee Singh as Co-Director.

CCR played a key role in the organisation of the ninth conference of the International Society on Child Indicators (ISCI) in 2024. It was the first ISCI Conference in India jointly proposed by the NLUO, Prof Ravinder Barn of Royal Holloway University of London, and Prof Damanjit Sandhu of Punjabi University Patiala. The Centre has overtaken NLUO's flagship Project Kutumb to ensure that the three nearby villages under this project are declared as child friendly villages as per the SDG / Niti Ayog indicators, in addition to the important action research, critical papers, projects, trainings, thought leadership and teaching courses it is involved in.

This edition—Volume 6 of the Journal on the Rights of the Child of National Law University Odisha—presents original works spanning research papers, case

commentaries, opinion pieces and infographic fact-sheet. The themes explored in this edition include evolution of jurisprudence on juvenile's right to bail, childhood obesity in a fast changing world, status check on the Right to Education, equity as imagined in the school meal programme of PM POSHAN, re-analysis of National Crime Records Bureau (NCRB) data on status of children in conflict with law in Odisha, child marriage, adoption, Romeo – Juliet laws in India, juvenile delinquency in India, refugee children's rights, digital childhood, children's contractual rights in influencer economy with special focus on sports and entertainment industry, best interests of children in custody disputes and visitation rights.

The depth and diversity of these contributions reflect the range and depth of contemporary child rights concerns and the importance of continued policy, practice, legal and societal engagement. Each of these issues highlights the necessity for a deeper understanding of the evolving nature of child rights from the lived experiences of the children, while also providing progressive and aspirational recommendations for strengthening and improving legal and other frameworks.

The authors contributing to this volume include academics from law and humanities disciplines, researchers and students. Each submission has undergone a rigorous editorial process, including two rounds of review and a double-blind peer review. The journal has benefited from the expertise and guidance of an esteemed editorial advisory board comprising eminent scholars and jurists dedicated to advancing justice and child rights. We are privileged to have the guidance of Justice Madan Lokur, Justice Gita Mittal, Professor Christopher Birbeck, Professor Bernd-Dieter Meier and Professor Bhabani Panda, whose collective wisdom has greatly contributed to the academic integrity of this volume. Their insights have not only strengthened the scholarly rigor of our journal but have also served as a northern star, guiding light in child rights discourse in India and beyond.

At the National Law University Odisha, our vision extends beyond producing skilled legal professionals. We are committed to fostering an environment that cultivates a deep sense of justice, inclusion, empathy and solidarity. The Centre for Child Rights embodies this vision, playing a pioneering role in shaping child rights discourse, bridging the lexis and praxis gap, influencing policy and advocating for systemic change. This journal stands as a testament to the dedication, hard work, and editorial excellence of the CCR team. As we mark a decade of impactful work, we extend our deepest appreciation to the editorial team comprising Dr Rashmi Rekha Baug, Dr Swagatika Samal, Dr Pradipta K Sarangi, Mr Ankit K Keshri, and Dr Shubanginee Singh, student editor Madhulika Tripathy, led by our editor

Prof Biraj Swain. Their tireless efforts, academic rigour, passion and commitment shows in this milestone publication. Their collective efforts have ensured that the journal remains a platform for meaningful scholarship and thought leadership, pushing forward the discourse on child rights that are both timely and essential.

We invite legal scholars, researchers, educators, practitioners, policy makers, activists, advocates, students, and all those engaged in child rights advocacy to engage with this journal, this volume and future issues. We hope that this journal serves as a vital academic resource sparking meaningful discussions, further research, and sustained advocacy for a more just and equitable world where every child has the opportunity to thrive. We look forward to the engagement, insights, and contributions of readers and future authors in shaping the future of scholarship, practice and advocacy on child rights that works for every child, anywhere and everywhere in the world.

Prof Ved Kumari
Vice Chancellor, National Law University Odisha
Patron-in-Chief, Centre for Child Rights
Editor-in-Chief, Journal on the Rights of the Child of NLUO

EDITORIAL NOTE

India stands at a crucial juncture in its legal and policy framework on children's rights, where judicial interventions and legislative advancements have significantly shaped the discourse, yet systemic challenges in enforcement, accessibility, and policy coherence persist. The recognition of children as rights-bearing individuals, children with agency, has evolved beyond a mere legal formality into a necessary systemic transformation requiring constant statutory reassessment, institutional mechanisms, and shifts in public perceptions. While progressive reforms have sought to safeguard children across diverse domains such as juvenile justice, adoption, digital privacy, and educational access, a stark gap remains in translating legal rights into lived realities.

The evolving child rights landscape in India is marked by the tension between protection, agency and autonomy, evident in areas such as juvenile bail, where statutory interpretations oscillate between rehabilitative ideals and punitive inclinations, and custody disputes, where judicial discretion often wields the power to shape a child's future amid competing parental claims. Adoption inefficiencies, particularly within the Central Adoption Resource Authority (CARA), highlight how bureaucratic inertia deprives children of stable homes, while the digital era has exposed them to new vulnerabilities such as cyberbullying and identity exploitation. The regulatory landscape also remains fraught with contradictions, particularly regarding adolescent agency, where the criminalization of consensual romantic relationships amongst teenagers under the Protection of Children from Sexual Offences (POCSO), Act 2012, has fuelled calls for a close-age-range exemption to balance autonomy with protection. This legal rigidity stands in contrast with welfare interventions like PM POSHAN, which, despite its intent to alleviate classroom hunger, struggles with implementation challenges that perpetuate cycles of deprivation. The intersection of right to food and nutrition, its intersection with cognitive development, education and social justice underscores the necessity for accountability and robust monitoring, just as the commercial determinants of health have intensified concerns about childhood obesity, where aggressive fast-food marketing and urbanization have compounded nutritional disparities, demanding stronger regulatory safeguards against exploitative corporate interests. Yet, one of the most overlooked and legally invisible group is refugee children, who remain in limbo without dedicated legislative protections,

enduring institutional mistreatment despite India's commitment to international child rights standards. Judicial interventions, though instrumental in addressing gaps in areas like child marriage and the ethical dilemmas of DNA testing for children born from sexual violence, often serve as a temporary and inadequate measure rather than comprehensive, permanent solutions.

Also in our current times inspite of the all-encompassing digital ingression, legislative voids persist in crucial areas like child influencers, performers in sports and entertainment, leaving them exposed to economic exploitation.

The meta-narrative of our Journal on the Rights of the Child of National Law University Odisha, Volume 6, spotlights that as India grapples with these multifaceted challenges, a dynamic, interdisciplinary approach integrating legal reforms, social policies, and ethical considerations becomes imperative to ensure that children's futures are not dictated by systemic failures but by the promise of justice, dignity, and equitable protection under the law. This volume also takes a close look operational gaps, vis-à-vis the child rights' laws on the books and how they unfold as justice on the ground.

The juvenile justice system's approach to bail has also been a significant concern, which has been examined in the first paper, *Taking Bail Seriously: Jurisprudence Evolution of Juvenile's Right to Bail* by Anita Ladha and Shruti Jane Eusebius. This paper examines the legal interpretation of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, and argues that courts have struggled to strike a balance between the rehabilitative ethos of juvenile justice and the broader public's safety concerns. Through a detailed analysis of Supreme Court and High Court judgments, the authors highlight the inconsistencies seen in the bail jurisprudence, especially in the cases of serious offences. The study advocates for a child-centric approach that aligns with the best practices and standards in the international sphere, highlighting that the right to bail for juveniles should be the norm rather than an exception, upholding the rehabilitative principles enshrined in the law.

Building on the discussion of children's rights in sensitive legal contexts, *Supersized Childhoods: The Impact of Fast-Food Advertising and Urbanization on Childhood Obesity* by Rishabh Tomar shifts focus to the commercial and environmental determinants of child health. This paper highlights how aggressive fast-food advertising, coupled with rapid urbanization, has contributed to a rise in childhood obesity in India. It critically examines marketing strategies that target children,

including digital advertising, brand mascots, and promotional toys, which create lifelong consumer habits detrimental to health. Additionally, the study explores how urban spaces often lack adequate recreational areas, discouraging physical activity and reinforcing sedentary lifestyles. The paper argues for a multi-pronged policy response, including stricter advertising regulations, improved urban planning, and school-based nutrition interventions to combat the long-term health risks posed by these trends.

The next paper, *Right of Children to Free and Compulsory Education Act, 2009: A Critical Analysis* by Meena Ketan Sahu examines the gaps in the Right To Education Act's implementation. Despite its progressive intent, the paper reveals that infrastructural deficiencies, teacher shortages, and socio-economic barriers continue to limit universal education access. The study calls for a re-evaluation of resource allocation and the integration of innovative pedagogical approaches to ensure the Act's objectives are met.

Continuing with the theme of education, cognitive development, life chances continuum and its intersection with socio-economic justice, the next paper, *PM POSHAN: Ensuring Social & Economic Justice for School-Going Children in India* by Kanishka evaluates the effectiveness of India's school meal programs in addressing classroom hunger and educational outcomes. The paper critically examines gender disparities in food distribution, the intergenerational effects of malnutrition, and the implementation challenges of PM POSHAN. The study suggests leveraging Artificial Intelligence and Machine Learning for vulnerability mapping and calls for participatory governance to enhance program efficiency. This paper highlights the intersection of child nutrition, education and state accountability, reinforcing the need for evidence-based policy reforms.

Next paper, *Family Ties, Broken Paths: Understanding the Roots of Juvenile Delinquency,* by Navya Rathi and Eve Dhariwal, explores the profound impact of family dynamics on juvenile delinquency. The paper examines how parental relationships, supervision and household environments influence juvenile behaviour, arguing that exposure to domestic violence, substance abuse, and neglect heightens delinquency risks. Conversely, parental engagement and structured support systems serve as protective factors. Highlighting interventions like multi-systemic therapy (MST) and functional family therapy (FFT), the study advocates for a shift from punitive to rehabilitative, family-centric approaches. By linking family dysfunctions to juvenile justice discourse, the paper underscores the socio-

economic dimensions of delinquency and the necessity of holistic interventions within India's child rights framework.

The precarious legal status of refugee children in India is the focus of the next paper, *Realising the Rights of Refugee Children Through the Jurisprudential Lens of Child Rights: Law and Practice in India* by Shailja Beria. The paper critiques India's lack of a structured refugee protection framework, which results in an ad hoc, discretionary approach to refugee rights. Despite India's obligations under international child-rights instruments like the United Nations Convention on the Rights of the Child (CRC), refugee children continue to face severe rights violations, including prolonged detention, family separation, and institutional neglect. The study highlights that the absence of legal recognition for refugee children exacerbates their vulnerability, limiting access to education, healthcare, and protection mechanisms. It argues for a child-specific refugee framework that prioritizes the "best interests of the child" principle, urging India to align its domestic policies with international norms. This discussion bridges the gap between refugee law and child rights, emphasizing that refugee children should not merely be treated as migrants but as individuals with distinct rights and protections.

Beyond physical well-being, the psychological and emotional stability of children is crucial, particularly in cases of family separation as explained and unveiled in the next paper. *Visitation Rights of Parents in India: Laws and Practices* by Palak Sharma delves into the legal and social challenges surrounding parental visitation rights post-divorce. The paper critiques the lack of a structured legal framework governing visitation, leading to inconsistent judicial decisions that often fail to prioritize the child's emotional well-being. It highlights the impact of strained parental relationships on children and calls for the adoption of child-centric approaches such as structured parenting plans, mediation, and shared custody models. Drawing on comparative legal analysis, the study argues for clear, uniform guidelines to ensure that children maintain stable relationships with both parents without being subjected to conflict-driven custody battles.

The complexities of custody battles are explored in the following paper, *The Best Interest of the Child in Custody Disputes* by Samparna Tripathy and Amit Samal. The authors critically analyse the application of the "best interest of the child" principle in Indian custody jurisprudence under the Guardian and Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956. The paper argues that judicial biases, procedural inefficiencies, and the absence of trained assessors

often lead to decisions that prioritize parental claims over the child's welfare. The study advocates for a more child-centric approach, including mediation, joint parenting agreements, and legislative clarity to ensure children's emotional and psychological well-being during custody disputes. This paper underscores the need for a paradigm shift in custody litigation, emphasizing a holistic understanding of children's rights beyond mere legal guardianship.

Extending this discussion on the child's rights in the evolving legal landscape of India, *Safeguarding Digital Childhood: A Critical Analysis of the IT Act, 2000 in Addressing Cyberbegging and Sharenting* by Satyam Mangal highlights what vulnerabilities the children face in the digital sphere. This paper outlines the inadequacies present in the IT Act, 2000, when it comes to the risks that children face on the internet, particularly when parents overexpose their children through sharenting and the growing menace of cyberbullying. He argues that in the absence of any explicit legal protection for children in the area, there would be legal breaches, economic exploitation and digital abuses. The paper calls for legislative reforms to align with the general data protection regulation (GDPR) to ensure that children are provided with the proper safeguards to ensure their best interests in digital policies.

The final research paper of this Volume, *Status of Children's Contractual Rights: In the Realm of Sports & Television* by Kashish Rathore & Sushant Mishra examines regulatory gaps in protecting child performers in entertainment and sports industry. It critiques inadequate labour laws that fail to prevent economic exploitation, unfair remuneration, and unstructured working hours. While the Child Labour (Prohibition and Regulation) Act, 2016, restricts hazardous work, it insufficiently addresses the unique vulnerabilities of child actors and athletes. The paper advocates for legal reforms, including enforceable contracts, trust funds, and oversight mechanisms, ensuring children's participation does not compromise their education and well-being, emphasizing the need to balance economic opportunities with fundamental rights.

The next piece is a factsheet, data visualisation through infographic, *Children in Conflict with Law in Odisha - What Do the NCRB Numbers Say?* by Pradipta Kumar Sarangi analyses juvenile crime trends in Odisha, linking socio-economic factors like poverty, education gaps, and familial instability to delinquency. It critiques the justice system's punitive approach and highlights deficiencies in rehabilitation mechanisms. Advocating a shift to a rehabilitative model, the paper

emphasizes community-based interventions, skill development, and psychological support for reintegration. It reinforces the need for a child-centric legal framework that prioritizes reform over punishment, contributing to the broader discourse on juvenile justice reform in India.

This volume is also running a case commentary, i.e. judicial responses to child rights violations, particularly in the context of child marriage, as critically examined in *Society for Enlightenment and Voluntary Action & Anr v. Union of India & Ors: A Case Comment* by Isha Mehrotra. This paper evaluates the Supreme Court's judgment on child marriage, emphasizing enforcement gaps in the Prohibition of Child Marriage Act, 2006 (PCMA). The analysis highlights the ineffective role of Child Marriage Prohibition Officers (CMPOs) and the absence of legal provisions against child betrothals, which undermine the law's preventive intent. The study argues that merely penalizing child marriage is insufficient and that a holistic approach—integrating community engagement, legal literacy, and proactive state intervention—is essential for meaningful deterrence. This paper contributes to the growing recognition that legal frameworks must be supported by robust implementation mechanisms to achieve their intended impact.

The final section of this journal has two opinion pieces. The first one being, *Evaluating the Efficacy of Romeo-Juliet Laws in India* by Saundarya D Nair and Priyasha Pattnaik. This examines the criminalization of consensual adolescent relationships under POCSO, 2012. The paper highlights concern over prosecuting teenage relationships as statutory rape, citing empirical data on the rise of "romantic cases." It advocates for a "close-age gap exemption," permitting a legally defined age difference, such as three years, to balance protection from exploitation with adolescents' sexual agency. Arguing for nuanced legal reform, the authors make a case for distinguishing genuine exploitation from consensual relationships within India's evolving child protection framework.

The final piece of this volume, *Adopted but Not Forgotten: Legal Deliberations on DNA Testing of Children Born & in Rape Cases* by Tisha Mehta and Urmi Shah examines the ethical and legal dilemmas of DNA testing in rape cases, particularly when the child has been adopted. It critically analyses cases where accused individuals seek DNA tests post-adoption to establish non-paternity as a defence. The paper highlights concerns over privacy, mental well-being, and identity, emphasizing DNA evidence's limited probative value in such trials. It calls for

strict judicial scrutiny to prevent legal manoeuvring at the cost of children's rights, contributing to broader debates in criminal law and child rights.

This volume and the range and depth of topics discussed is a timely reminder that the concept of childhood, well-being, children's rights are diverse, comprehensive and dynamic. Children's rights are not abstract ideas but lived realities shaped by legal interpretations, policy decisions, and socio-economic conditions. From juvenile justice reforms to digital privacy protections, from adoption inefficiencies to the tight link to education, the discussions in this volume highlight the pressing need for holistic and rights-based interventions, and most importantly, placing the children, their voice and agency, at the center of everything that affects them i.e. laws, processes and programmes.

Hope this volume will be the beginning of new conversation, research, reforms, practice and most importantly a progressive shift in our concerns and gaze for the children and the world.

Prof Biraj Swain
Chief Minister's Chair Professor cum Director, Centre for Child Rights
Editor, Journal on the Rights of the Child of NLUO

JOURNAL ON THE RIGHTS OF THE CHILD OF NATIONAL LAW UNIVERSITY ODISHA

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TAKING BAIL SERIOUSLY: JURISPRUDENTIAL EVOLUTION OF JUVENILE'S RIGHT TO BAIL

Dr. Anita Ladha[1] *& Ms. Shruti Jane Eusebius*[2]

Abstract

Bail is an important element of the presumption of innocence – a cardinal principle of criminal law. Bail is also a facet of the right to life and liberty under Article 21 of the Constitution of India, and posits that a person's liberty cannot be curtailed without just cause. Presumption of innocence has been recognized in Section 3(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter JJ Act) as a fundamental principle in the juvenile justice system in India. The JJ Act also places emphasis on institutionalization as a measure of last resort, and also recognizes the right of the child to be reunited at the earliest with his/her family. Emphasis is on the liberty of the child in the juvenile justice law in India. The right to bail has been specified in Section 12 of the JJ Act. The paper examines the jurisprudence relating to bail in the juvenile justice system in India. The statutory provisions in the JJ Act are critically analysed in the paper to delineate the scope and ambit of the right to bail for juveniles in conflict with law. The judgments of the High Courts and Supreme Court have also been analysed to comprehend the dimensions of the bail jurisprudence in the juvenile justice system in India. The paper seeks to highlight notable features of the jurisprudence of bail in the juvenile justice law in India and seeks to study the operation of the juvenile justice system as a dimension of the criminal justice system.

Keywords: juvenile justice, bail, juvenile (child) in conflict with law; child rights; criminal justice

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Introduction

The juvenile justice system in India, established under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter "JJ Act") is a specialised system to deal with children who, on account of certain factors and causes, require the intervention, protection and care of the State. This system is rooted in the doctrine of *parens patriae* which vests parental role in the State as the guardian and protector of vulnerable sections of society including children. This system deals with two categories of children i.e. persons under the age of 18 years (Juvenile Justice (Care and Protection of Children) Act of 2015, § 2(12)) *viz.* 'child in conflict with law' (hereinafter "CICL") and 'child in need of care and protection' (hereinafter "CNCP"). CICL are children who are alleged or found to have committed an offence under the penal law of India (Juvenile Justice (Care and Protection of Children) Act of 2015, § 2(13)) while CNCP are children who are vulnerable, neglected, abandoned or at risk of exploitation and/ or abuse (Juvenile Justice (Care and Protection of Children) Act of 2015, § 2(14)). The juvenile justice system provides for a special mechanism to deal with these categories of children on the rationale that the child in question is in the current predicament due to certain factors and causes, and these may be addressed through interventions in the welfare of the child. The system operates with the objective of ensuring the 'best interests of the child' (Juvenile Justice (Care and Protection of Children) Act of 2015, § 2(9)) which is a welfare goal encompassing care, protection, development and well-being (Rohith Thammana Gowda v. State of Karnataka, 2022). The concept of 'best interests of child' has wide connotation which includes parental association and care (Yashita Sahu v. State of Rajasthan, 2020), as well as developmental needs (Lahari Sakhamuri v. Sobhan Kodali, 2019), and protection from victimisation and exploitation (Eera v. State (NCT of Delhi), 2017).

The juvenile justice system operates on the fundamental principles listed in Section 3 including the presumption of innocence, best interests, non-stigmatising semantics, family responsibility, equality and non-discrimination, diversion, repatriation and restoration and institutionalisation as a measure of last resort. These principles have been laid down to ensure a diversionary, child-friendly and child rights-friendly approach to deal with CICLs and CNCPs. This system is focussed on the child and addressing the causes which have resulted in his/her vulnerability.

The juvenile justice system dealing with CICLs has been envisioned as a diversionary mechanism to the criminal justice system providing for child-appropriate procedures and approaches to deal with offending by children, based on the goal of rehabilitation and restoration, seeking to address the causes of delinquency through State intervention. It is based on the principle of presumption of innocence, and further to the avowed principle of 'institutionalization as a measure of last resort' (Juvenile Justice (Care and Protection of Children) Act of 2015, §3(xii)) the juvenile justice system seeks to address the causes of delinquency through orders that promote family responsibility for the child's welfare and re-integration of the child into society. It seeks to ensure that children are subjected to institutional care only in rare cases and as a measure of last resort. The juvenile justice system dealing with CICLs is notably liberty-oriented as it shuns the concepts of arrest and interrogation (instead it uses the term 'apprehension' and 'inquiry'), sentencing (employs dispositional orders for dealing with CICLs) and also provides for a statutory right to bail.

The paper examines the juvenile justice system specifically relating to CICLs with specific analysis of the jurisprudence of bail with regard to the CICL under the JJ Act. The reported judgments of the Supreme Court of India and the High Courts on Section 12 of the JJ Act have been analysed to identify the developments in the bail jurisprudence in juvenile justice law. To ensure relevance, the judgments which have not delved into the interpretation of Section 12 have been excluded from the analysis in the paper. Analysis has been undertaken on the jurisprudential interpretation of Section 12, as well as the developing jurisprudence regarding the applicability of anticipatory bail and default bail in juvenile justice cases. The paper is limited to the jurisprudence with regard to the right to bail of CICLs under the JJ Act.

Bail: Constitutional Underpinnings

The term 'bail' has its origins in the French term *'baillier'* which translates to mean "to control, to guard, to deliver"; and is also rooted in the Latin term *'baiulare'* which means "to bear a burden" (Singhvi, 2022 p.2). The term 'bail' has been explained by the Law Commission of India to mean a release from custody - "*judicial interim release of a person suspected of a crime held in custody, on entering into a recognisance, with or without sureties, that the suspect would appear to answer the charges at a later date; and includes grant of bail to a*

person accused of an offence by any competent authority under the law" (Law Commission of India, Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, 2017 p.22). The term 'bail' is defined in the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter BNSS) to mean "*release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond*" (Bharatiya Nagarik Suraksha Sanhita of 2023, § 2(b)). The term is essentially an element of the liberty jurisprudence which strives to protect the liberty of the individual against state excesses (Kurshid, 2022 p. 177-182). Bail is rooted in Article 21 of the Constitution of India and requires that a person's liberty is not curtailed or deprived without just cause. Bail requires that a person is not required to suffer incarceration (which may be likened to punishment) before his/her guilt is established according to the procedure established by law. It acts against unnecessary deprivation of a person's liberty and strives to strike a balance between the goals of criminal justice and the individual's liberty. Bail is an important facet of the criminal justice system which is rooted in the human rights jurisprudence and the due process jurisprudence. It is based on the principle of presumption of innocence i.e. the belief that every person is innocent until proven guilty. It also is an intrinsic element of fair trial as it requires that a person's freedom should not be unduly or unnecessarily curtailed, and incarceration should only be resorted to in the interests of justice.

Bail in Juvenile Justice

The juvenile justice system in India is governed by the JJ Act which applies to all children under the age of 18 and deals with children who are alleged or found to have committed an offence as well as children who are in need of the state's care and protection. The JJ Act is a special legislation enacted with the objective of ensuring the welfare and protection of the child. (Juvenile Justice (Care and Protection of Children) Act of 2015, Preamble) Protection of the "best interests of the child" is the goal and basis of decisions and measures taken under the JJ Act (Juvenile Justice (Care and Protection of Children) Act of 2015, §3(iv)).

Bail as a Statutory Right

Bail in cases of CICLs is provided for in Section 12 of the JJ Act, which mandates that persons who are under the age of 18 years (thereby falling within the definition of 'child' under the JJ Act) and are alleged to have committed an

offence punishable under the penal laws of India, are required to be released on bail. Section 12 operates as an imperative mandate, and this mandate is evidenced by the use of the word 'shall' which signifies that bail is to be granted as a rule (Sandeep Ayodhya Prasad Rajak v. State of Maharashtra, 2022).

The Supreme Court in *Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, 2020* expressly underscores the grant of bail as a mandatory rule in juvenile justice cases. In this judgment, the Supreme Court has observed that the letter of law requires that the child be released on bail and the embargo on the liberty of the child is only in three exceptional situations which are not in the best interests of the child. Further, in case of denial of bail, the JJB is required to record the reasons in writing for such denial. The Supreme Court has emphasised on the proactive role to be played by the JJB to ensure that the immediate grant of bail in accordance with the letter and spirit of the JJ Act. Further, in *Juvenile in Conflict with Law v. State of Rajasthan & Anr, 2024* the Supreme Court held that a CICL cannot be denied bail without recording a finding regarding the applicability of the proviso to Section 12(1) i.e. the existence of reasonable grounds to deny bail.

The right to bail is in consonance with the objective of the JJ Act i.e. protection of the best interests of the child. (Sandeep Ayodhya Prasad Rajak v. State of Maharashtra, 2022) The principle of dignity and worth which is a fundamental principle governing the juvenile justice system in India (Juvenile Justice (Care and Protection of Children) Act of 2015, §3(ii)), the fundamental human rights and freedoms along with the juvenile justice objectives of rehabilitation and reintegration are the factors which necessitate the adoption of a beneficial approach towards the child in matters of bail under Section 12 (Tejram Nagrachi v. State of Chhattisgarh, 2019).

The provisions of the CrPC/ BNSS and any other law in force in India do not apply with regard to the determination of bail in juvenile justice cases and the application of Sections 437 and 439 CrPC/ Sections 482 and 483 BNSS is excluded in cases of bail to CICLs. (CCL 'A' v. State (NCT of Delhi), 2021; Tejram Nagrachi v. State of Chhattisgarh, 2019) The parameters for the grant of bail as prescribed in Section 439, CrPC are distinguishable from the parameters for grant of bail under Section 12 of the JJ Act. (Sandeep Ayodhya Prasad Rajak v. State of Maharashtra, 2022) It has been noted in *Tejram Nagrachi Juvenile v.*

State of Chhattisgarh through the Station House Officer, 2019 that the CrPC does not provide for the situation which warrants the modification of bail. Hence, if bail is determined under Section 439 CrPC, the CICL will be deprived of the rights available to him/her under Section 12 clauses (2), (3) and (4). Accordingly, Section 12 has been given an overriding effect in matters of bail to CICL. Accordingly, the grant of bail to CICLs is required to be determined as per Section 12 of the JJ Act and not Section 437 and 439 CrPC/ Sections 482 and 483 BNSS.

Parameters for Grant of Bail

The parameters for grant of bail in juvenile justice cases are different from the parameters applicable under the CrPC (Babu Lal v. State, 2023). The best interest of the child is the primary consideration and paramount factor for the determination of bail the CICL. (Virendra Singh v. State, 2020) Bail is required to be granted irrespective of the nature and gravity of the offence that has been committed by the child (Virendra Singh v. State, 2020; Rahul v. State of Rajasthan 2020; Mahendra v. State, 2020) and the merits of the case have no relevance in the determination of bail (Devanand @ Bala Bhat v. State of Rajasthan, 2020). The scheme of the JJ Act favours the grant of bail to CICLs (Anmol Kumar v. State of Bihar, 2019; Virendra Singh v. State, 2020; Rupesh Kumar v. State of Bihar, 2019). While it has been noted that Section 12 is silent on the issue of whether the heinousness of the offence is a consideration in the determination of bail (Ayaan Ali v. State of Uttarakhand, 2022), the Courts have held that the nature and gravity of the offence are not determinant factors in the determination of bail (Anmol Kumar v. State of Bihar, 2019; Virendra Singh v. State, 2020; Rupesh Kumar v. State of Bihar, 2017). Furthermore, a CICL is entitled to bail in both bailable and non-bailable offences (Nirmala v. State of Uttarakhand, 2022) and this distinction is irrelevant in the determination of bail (Ayaan Ali v. State of Uttarakhand, 2022). In *Karan v. State through Ratkal Police Station, 2017*, the possibility of danger to the life of the child in conflict with law was not held to be sufficient basis for denial of bail.

In *X s/o Laxman v. State and Others, 2021* it was stated that the legislative mandate of Section 12 does not require that the victim be notified before the hearing of the bail application and the practice of impleading the complainant as a party in bail hearings under Section 12 is without any basis. Presence of the prosecutrix at the time of determination of bail is not envisaged under Section 12 and hence,

the views and apprehensions of the prosecutrix will not have any bearing on the determination of bail (Babu Lal v. State, 2023).

In *Vigneshwaran @ Vignesh Ram Rep. by his father Rajaiyan v. State rep by the Inspector of Police, 2016* it was noted that the provisions of Section 12 did not require the obtaining of the Probation Officer's report prior to the grant of bail and hence, the report cannot be a pre-condition for determination of bail.

Exceptions to the Rule of Bail

The provision to Section 12(1) specifies three situations in which bail is to be denied to the CICL. The proviso carves out three limited exceptions to the mandate of bail in juvenile justice and states that bail is to be denied in situations where the release of the CICL would –

(i) bring him into association with any known criminal

(ii) expose him/her to moral, physical or psychological danger

(iii) defeat the ends of justice.

First Exception: Release would bring CICL into Association with any Known Criminal

The first situation where bail is required to be denied to the CICL is where the release of the CICL would bring him/her in to association with any 'known' criminal. This provision essentially looks to protect the CICL from influences which would be against his/her interest and would lead him/her into further criminal activities. The term 'known' indicates the legislative intent that the criminal in question be identified and his particulars be known to the court (Ayaan Ali v. State of Uttarakhand, 2022). It is not a mere estimation of the likelihood of coming into contact with criminal elements in society, rather it is a fixed determination of the particular criminal who the CICL would come into contact with if he/she is released. This ground of denial of bail is in the best interests of the CICL to protect him from unsavory/ criminal influences in his surroundings. To determine the fulfilment of this exception, reference has been made by the courts to the report of the Probation Officer which would reveal the peer group and circle of influence of the CICL and their impact (both negative and positive) on the CICL (Vinay Tiwari v. State of Madhya Pradesh, 2018). The association of the CICL with co-accused in the case has also been held by the Courts to be basis for denial of bail (Arun v. State, 2019). Notably, in juxtaposition, in cases where the CICL is likely to come

into contact with criminal elements, the courts have addressed this concern and released the CICL on bail by requiring the guardian to furnish an undertaking in this regard (X s/o Laxman v. State, 2021). It is also noteworthy that in absence of records to indicate the criminal antecedents of the CICL and his association with criminals, the refusal of bail on this ground has been held to be unwarranted (Rupesh Kumar v. State of Bihar, 2017).

Second Exception: Release would Expose CICL to Danger

The second situation where bail is to be refused to the CICL is where the release would expose the CICL to moral, physical or psychological danger. The second exception requires that the CICL should not be released on bail if he will be exposed to danger. While the term 'danger' includes various aspects, the danger in contemplation of the statute is limited to three aspects – "physical, psychological and moral". Physical danger would mean that the CICL would be at risk of bodily harm by certain persons, exposure to domestic violence, sexual abuse, etc. Psychological danger would include within its ambit threats to the CICL's mental health which could potentially include verbal violence, depression, substance abuse and addiction. Moral danger would include within its ambit factors like recruitment into criminal gangs, which would lead to corruption of the character of the CICL which could be caused by peer group, neighbourhood or familial influence. The denial of bail under this exception is essentially a protective measure to ensure the well-being of the CICL.

Third Exception: Release would Defeat the Ends of Justice

The third situation where bail is required to be refused to the CICL is where the release of the CICL would "*defeat the ends of justice*". The term "ends of justice" has been held to include situations where the grant of bail is likely to cause injustice (Vikas v. State of Madhya Pradesh, 2020) and / or be against the best interests of the child, the victim or society at large. The term has been interpreted as a blanket term which includes various factors which are related to the adjudication of the case involving the CICL. It is stated to include factors like the nature of crime, merits of the case etc. (Mr. X (Minor) v. State of Uttar Pradesh, 2022; Raju @ Ashish v. State of U.P, 2018). The term 'justice' in this exception has been interpreted to be fairness – to the CICL, to the victim and to society (Virendra Singh v. State, 2020; Raju @ Ashish v. State of U.P, 2018). In cases where the CICL, if released, poses a threat to society, it has been held to defeat the ends of justice as it would impact

the society's confidence on the judicial system (Arun v. State of Karnataka, 2019) . This provision is often interpreted to deny bail to the CICL on the grounds that the CICL poses a threat to the victim or will come into contact with the victim (Mr. X (Minor) v. State of Uttar Pradesh, 2022. Furthermore, the nature of the offence committed by the CICL has also been weighed as a factor which would justify denial of bail under this exception (Vikas v. State of Madhya Pradesh, 2020; Arun v. State of Karnataka, 2019). It has been held in *Mr. X (Minor) v. State of Uttar Pradesh, 2022*, that the term "ends of justice" needs to be considered with three aspects *viz*. firstly, from the angle of the best interests and welfare of the CICL; secondly, from the angle of the cause of the judicial system and the victim; and thirdly, from the angle of the interests of the society.

Denial of Bail as the Exception to the Rule of Bail

Bail is the rule under the JJ Act and denial of bail is only permissible in exceptional circumstances (Rahul v. State of Rajasthan, 2020). The proviso to Section 12(1) carves out the exceptions to the mandatory rule prescribed in Section 12(1). The exceptions carved out to the rule of bail in Section 12(1) are not generalized exceptions, rather the proviso requires that there should be reasonable grounds to believe that either of the conditions are fulfilled. The requirement of grounds reveals the intention of the legislature to require factual basis i.e. the fulfilment of the exception should be based on certain factual circumstance and should be backed by evidence and materials. It cannot be a mere conjecture or assumption. Further, the term 'reasonable' qualifies the condition to the effect that the grounds should be tested on the standard of reasonableness i.e. the fulfilment of the exception should be tested on the assessment of a reasonably prudent person. The only exceptions to the rule of bail are specified in the *proviso* to Section 12. In all cases which do not fall within the *proviso*, bail is to be granted (Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, 2020).

In cases where bail is denied to the CICL, the reasons for such denial of bail must be recorded in writing (Re Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India, 2020; Sandeep Ayodhya Prasad Rajak v. State of Maharashtra, 2022). The recording of reasons is a mandatory requirement under Section 12 (Jiva Kumar Harijan v. State of Maharashtra, 2022; Arun v. State of Karnataka 2019). Rejection of bail which is not backed by reports, factual evidence and materials would be baseless and unwarranted (Jiva Kumar Harijan v. State of

Maharashtra, 2022). The requirement of recording reasons for denial of bail as mandated by the *proviso* to Section 12 indicates that bail is ordinarily to be granted and denial of bail would be only in exceptional situations, the reasons for which would have to be recorded (Tejram Nagrachi v. State of Chhattisgarh, 2019). Bail can be denied in both bailable and non-bailable offences if the conditions specified in the proviso to Section 12 (1) are fulfilled (Nirmala v. State of Uttarakhand, 2022). Denial of bail is required to be based on materials before the JJB (Devanand @ Bala Bhat v. State of Rajasthan, 2020; Mahendra v. State, 2020) and should not be based on mere surmises and opinions (Anmol Kumar v. State of Bihar, 2019). The materials proving the fulfilment of the conditions in the proviso are required to be brought on record by the prosecution and the burden of proving the fulfilment of the conditions is on the prosecution (Devanand @ Bala Bhat v. State of Rajasthan, 2020; Mahendra v. State, 2020).

The import of Section 12(1) is that bail is to be mandatorily granted to CICL except in the three situations specified wherein the grant of bail is in contrast to the CICL's best interests and welfare, and would render the cause of justice to be ineffective. Bail can be denied in limited situations which is evidenced by materials, and the denial is to be recorded in writing citing the reasoning of the JJB and the materials on which such denial is based. Recently the Supreme Court held that a child in conflict with law cannot be denied bail without a recording of a finding with regard to the applicability of the conditions specified in the proviso to Section 12 (Juvenile in Conflict with Law v. State of Rajasthan, 2024).

A notable issue is the requirement of the presence of the victim in bail hearings under the JJ Act. The Delhi High Court has held that the considerations for grant of bail to CICLs are not dependent on the prosecutrix's views and the parameters for grant of bail are distinct under the JJ Act. In this situation, giving audience to the prosecutrix will not have any bearing on the grant or denial of bail under the JJ Act (Babu Lal v. State, 2023).

Bail Issues Beyond Section 12

Section 12 deals with the grant of bail in situations where the CICL is apprehended or detained (Juvenile Justice (Care and Protection of Children) Act of 2015, §12(1)). It also applies to situations where the CICL appears before the JJB or is brought before the JJB. Accordingly, Section 12 deals with bail upon apprehension and appearance before the JJB, and is silent on the issue of bail prior

to apprehension as well as the issue of grant of bail subsequent to the denial of bail and consequent placement in child care institutions.

Anticipatory Bail in Cases of Children in Conflict With Law

Anticipatory bail is provided in Section 438 CrPC/ Section 482 BNSS and there are divergent views of the High Courts on the applicability of the provisions regarding anticipatory bail in juvenile justice cases.

Applicability of Anticipatory Bail to CICLs

Several High Courts have taken the view that anticipatory bail is applicable to cases involving CICLs. The reasoning of the High Courts in arriving at this conclusion may be encapsulated as follows

- The *non obstante* clause in Section 12(1) of the JJ Act does not denude the provisions of anticipatory bail in its applicability to juvenile justice cases and does not disentitle the CICL from claiming the remedy under Section 438 CrPC (Birbal Munda v. State of Jharkhand, 2019).
- Section 12 must not be interpreted to the detriment of the CICL, thereby disentitling him/her from the statutory scheme of anticipatory bail. A beneficial interpretation of Section 12(1) requires that a rational construction of the *non obstante* clause be given and the CICL be put in a better position. Accordingly, the CICL is entitled to seek the relief of anticipatory bail in terms of Section 438 CrPC (Raman v. State of Maharashtra 2022). The Act cannot be interpreted in a manner to curtail rights available to CICL under other laws (Kureshi Irfan Hasambhai v. State of Gujarat, 2021)
- The JJ Act did not exclude the application of Section 438, and hence anticipatory bail applications in cases of CICLs would be maintainable (Munwa Devi v. State of Jharkhand, 2017).
- Section 438 CrPC is applicable to 'any person' and accordingly the benefit would be available to a child as well (Raman v. State of Maharashtra, 2022).
- Sections 10 & 12 of the JJ Act apply to the stage post-apprehension while anticipatory bail relates to the stage prior to apprehension. Hence, there is no conflict between Sections 10 & 12 JJ Act and Section 438 CrPC (Raman v. State of Maharashtra, 2022).

- Anticipatory bail is applicable for the following reasons. – (i) need for protection of liberty of CICL; (ii) Lack of express provision in JJ Act barring application of Section 438 CrPC (Surabhi Jain (Minor) v. State of W.B, 2021.

Non- Applicability of Anticipatory Bail to CICLs

Conversely, several High Courts have held that Anticipatory Bail is not applicable to cases of CICLs. The broad reasons for this view are-

- As the CICL cannot be "arrested" so the application for anticipatory bail would not be maintainable in juvenile justice cases (K. Vignesh v. State, 2017; Mohd. Bin Ziyad v. State of Telangana, 2021).
- The JJ Act is a self-contained code and hence, the provisions of the CrPC would not be applicable (K. Vignesh v. State, 2017; Piyush minor through his natural mother v. State of Haryana, 2021; Tejram Nagrachi v. State of Chhattisgarh, 2019). The JJ Act has overriding powers in matters of apprehension and detention (Rashid Rao v. State of Uttarakhand, 2022).
- JJ Act is a complete code to deal with any eventualities relating to a child in conflict with law. The word, 'apprehended' is used instead of 'arrest' in the JJ Act. Apprehension of arrest is a condition precedent for invoking the jurisdiction under Section 438, Cr. P.C. However, in the absence of the provision of arrest under the JJ Act, the provision of anticipatory bail does not become applicable (Kara Taling v. State of Arunachal Pradesh, 2022).

Cleavage in Views on Applicability of Anticipatory Bail

The issue of applicability of the provisions of Section 438 CrPC to cases of CICLs under the JJ Act has also been an issue of cleavage in judicial opinions within High Courts.

Calcutta High Court- Coordinate benches of the Calcutta High Court have taken differing views on the issue. One bench has opined that the JJ Act is a complete code by itself and, therefore, in view of Section 5 CrPC the provisions of the JJ Act cannot be whittled down nor can be superseded by any provision of the Code of Criminal Procedure including Section 438 thereof (Krishna Garai v. State, 2016). The subsequent bench was of the view that the JJ Act does not contain any specific provision for anticipatory bail and, therefore, the right of the juvenile cannot be foreclosed if otherwise available under the general law. The bench roots the issue in the Constitution of India holding that the fundamental right guaranteed

under the Constitution is equal to all and a special protection can be provided to marginalised person or a person with some disability to augment their need in juxtaposition with the individual invoking the provision for anticipatory bail but it is unacceptable that the child in conflict with law shall be denied such right when the special law applicable does not contain any such provision. The subsequent bench has referred the matter to a larger bench for determination of the issues of whether the application for anticipatory bail under Section 438 of the Code of Criminal Procedure is maintainable at the instance of the child in conflict with law before the High Court; and whether the provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 excludes the operation of the provision of Section 438 CrPC (Surabhi Jain (Minor) v. State of W.B., 2021).

Kerala High Court – In *X v. State of Kerala, 2018* the application for anticipatory bail at the instance of the CICL was held to be maintainable before the Sessions Court or the High Court. In *A v. State of Kerala, 2019* the JJB was held to be empowered to consider applications for anticipatory bail. In *X (Prashob) v. State of Kerala, 2018* the term "any person" in Section 438 CrPC was held to include CICLs and accordingly the section provided the liberty to the CICL to apply for anticipatory bail under Section 438 CrPC (X (Prashob) v. State of Kerala, 2018). However, in *Reni Krishnan v. State of Kerala, 2018* it was held that since the JJ Act does not envisage the "arrest" of the CICL, therefore the provision of anticipatory bail would not be applicable, as the same is claimed on the "apprehension of arrest".

Madhya Pradesh High Court – In *Missa v. State of Madhya Pradesh, 2018* it was held that the provisions of the JJ Act did not expressly or impliedly exclude the applicability of the Section 438 CrPC and the remedy of anticipatory bail was not barred under the JJ Act. However, in *Vidhikaulaghan Karne Walabalak v. State of M.P., 2022* it was held that anticipatory bail is not contemplated in the JJ Act as the CICL is never under confinement by way of arrest.

Allahabad High Court – There were differing views on the issue of applicability of anticipatory bail to CICLs (Shahaab Ali v. State of U.P., 2020; Mohd. Zaid v. State of U.P., 2020; Minor v. State of U.P., 2023) resulting in a reference to a larger bench which held that legislature has not barred application of S. 438 CrPC and has left it to the court to bring about harmonious construction of the two statutes. Further, Section 10 & 12 operate post apprehension stage and

not pre apprehension. The *non obstante* clause operates only when there is conflict between CrPC and Section 12 JJ Act. Since there is no conflict, availability of right under Section 438 CrPC cannot be taken away to the detriment of the child. JJ Act is a beneficial legislation and the right of the child under general law cannot be taken away (Mohd. Zaid v. State of U.P, 2020).

The opinions of the High Court on the applicability center on two core aspects *viz.* the nature of detention under the JJ Act (if the same is equivalent to arrest and thereby impacts the liberty of the CICL) and permissibility of a beneficial construct of the statute especially the *non obstante* clause. The differing views of the High Courts on the applicability of Section 438 to cases of CICL is an area which requires definitive judicial disposition. While several High Courts lean in favour of providing the remedy of anticipatory bail, the lack of finality on this issue leaves it open for the courts to adopt their own interpretation thereby creating judicial uncertainty on the issue. Therefore, it is necessary that this issue of applicability of Section 438 to cases of CICLs be provided finality through a judgment by the Supreme Court of India which lays down the law in this regard.

In this context, it may be worthwhile to consider the principle of institutionalization as a measure of last resort which forms a basis for the processes and decisions under the JJ Act. Apprehension, though not considered as arrest does impact the liberty of the CICL and subjects him/her to institutional care. Anticipatory bail would be a measure that upholds the liberty of the CICL and ensures that the CICL is subjected to institutional care only when it is absolutely necessary. A beneficial construct of the legislation would further the interests of the child.

Default Bail

The JJ Act is silent on the issue of whether the CICL would be entitled to the benefit of default bail, and it is unclear whether the same can be claimed as a matter of right by the CICL. Furthermore, the issue of applicability of default bail has not been subjected to much judicial interpretation. Notably, the Rajasthan High Court has dwelt on this issue and determined in *Pankaj Meena v. State, 2020* that default bail is an indefeasible right of the accused and the same is available to the CICL.

Delay and the Right to Bail

While the JJ Act is silent on the right to bail on account of delay in conclusion of the proceedings, the right to speedy trial which is guaranteed under

Article 21 of the Constitution of India entitles every individual to bail in cases where there is inordinate delay in conclusion of the proceedings. Notably, in *V.K. (Juvenile) v. State of Rajasthan, 2023*, the Supreme Court granted bail considering the fact that the CICL had spent two years in custody during the pendency of the proceedings.

Bail During Covid-19 Times

The right to bail gained prominence during the Covid-19 pandemic wherein the health and safety of the CICLs became paramount and housing of CICLs in child care institutions was noted to be against their best interests. The Supreme Court of India in *Contagion of Covid-19 Virus in Children Protection Homes, In re, 2020*, noted the vulnerability of CICLs in child care institutions, and directed the JJBs and Children's Courts to proactively consider the necessity of keeping CICLs in child care institutions and to take urgent steps to release the CICLs on bail to protect their health and well-being. The Madhya Pradesh High Court in *In reference (Suo Motu) v. State of MP and Others, 2021* considered the situation and health risk posed by the Covid-19 pandemic and directed the release of CICLs kept in Observation Homes. The CICLs were directed to be released on bail, and the legal services authorities were directed to move applications for the CICLs in this regard.

Bail in Cases Where Child is in Conflict With Law and Also is in Need of Care and Protection

The cases where the child is alleged to have committed an offence, and is also vulnerable pose a unique challenge in determination of bail. In these cases, the JJB may be required to consider the fact that the release of the child may not be in the best interests of the child and accordingly may have to curtail the liberty of the child. Here the right to bail has to be considered along with the rehabilitative needs of the child. In such cases, the matter is referred to the Child Welfare Committee (hereinafter "CWC") for consideration as the child may on one hand have committed an offence and on the other hand may be a vulnerable child who may be a CNCP. The CWC, in such cases, is required to undertake an inquiry into the matter on issues which affect the safety and well-being of the child and take appropriate action (Juvenile Justice (Care and Protection of Children) Act of 2015, §30). Notably the report of the Child Welfare Committee provides information of the antecedents of the child as well as services that must be provided to the child

(Junaid v. State, 2021) especially in cases where the child is a victim of sexual abuse or domestic violence or substance addiction (Siddhant @ Aashu v. State, 2023). In such cases, the Child Welfare Committee is tasked with the creation of an assessment report of the child, identification of suitable persons to protect the interests of the child and to receive the bail notice on behalf of the child (Juvenile Justice (Care and Protection of Children) Act of 2015, §30). Notably, the Child Welfare Committee is obligated under the JJ Act to interact with child victims, and the statement of the victim child to the Child Welfare Committee has evidentiary value and may become part of the case diary (Ajay Diwakar v. State of U.P., 2023). The recommendations of the Child Welfare Committee are vital in these cases as they may reveal the factors which increase the vulnerability of the child and are vital in the determination of grant of bail.

Conclusions

Bail in the juvenile justice system in India is distinct from the principles of bail applicable to adults under the CrPC. At the same time, in both cases i.e. children and adults, bail is the rule and its denial is the exception. The first consideration is that the JJ Act, unlike the CrPC, is a beneficial legislation which is required to be interpreted for the welfare of the child. This welfarist construct of the JJ Act requires that the provisions including bail be interpreted and applied for the child's welfare of rehabilitation and protection and restoration of the child's rights rather than from a criminal justice perspective of deterrence. The parameters for determination of bail for adults and children are distinct. The overriding determinant for grant or refusal of bail in the juvenile justice system (unlike the determinant factors applicable for adults) is the "best interests of the child". This is in keeping with the overarching objectives of welfare and protection of children. This welfare objective was the driving factor for the grant of bail to CICLs during the Covid-19 pandemic. A beneficial construction has been given by the courts to the provisions of bail in order to secure the interests of the child. The principles of 'institutionalization as a measure of last resort' (Juvenile Justice (Care and Protection of Children) Act of 2015, §2(xii)) and 'repatriation and restoration' (Juvenile Justice (Care and Protection of Children) Act of 2015, §2(xiii)) also require that children should be institutionalized only if there are no other suitable alternatives, thereby giving primacy to the care of children in the home environment and the right to association and care of the family. The thrust of the JJ Act indicates a liberty orientation with bail under Section 12 being the right and its denial the exception which is only

in three exceptional situations specified in the provision. The JJ Act requires the orientation of all actions to be focused on the child and his best interests, and all actions are required to be determined and undertaken to serve such best interests of the child (Juvenile Justice (Care and Protection of Children) Act of 2015, §2(iv)). This necessitates that the nature of the offence ought not to be the consideration for determination of bail. There is much variance in the views taken by the High Court with regard to the interpretation of Section 12. This necessitates a definitive ruling by the Supreme Court on the issue of the interpretation of the proviso to Section 12(1). Bail in juvenile justice is a significant component of fair trial which is a right that must be guaranteed to all persons including children in conflict with law. It must be ensured that children are not serving out terms in institutions as a 'pre-inquiry' inmate, and that such institutions aren't converted into institutions of punishment rather than reformation. It is therefore necessary to ensure effective interpretation and implementation of Section 12 in the best interests of the child.

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SUPERSIZED CHILDHOODS: THE IMPACT OF FAST-FOOD ADVERTISING AND URBANIZATION ON CHILDHOOD OBESITY

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Abstract

Fast-food advertising, together with urbanization has developed into a worldwide health emergency affecting childhood obesity rates. The article explores how environmental and commercial variables shape kids' eating behaviour and physical movement patterns, especially in city environments. The article investigates the ways that strategic marketing approaches, together with city layouts, create unhealthy living patterns that enhance child obesity statistics. The article examines the powerful effects of fast food marketing on child eating habits by combining an extensive review of academic work with policy examinations and real-world case examples, which demonstrate urbanization as a promoter of physical inactivity together with restricted availability of wholesome food items. Important research data indicates that intensive food advertising manipulates children's taste choices toward high-calorie items, and the physical environment of cities usually impedes movement levels. The article ends with recommended policies that combine enhanced advertising rules with town planning approaches that advance healthier life choices. Such actions remain crucial to fight the growing child obesity epidemic while creating sustainable health benefits for the community.

Keywords: childhood obesity, fast food, World Health Organization, advertisement, urbanization

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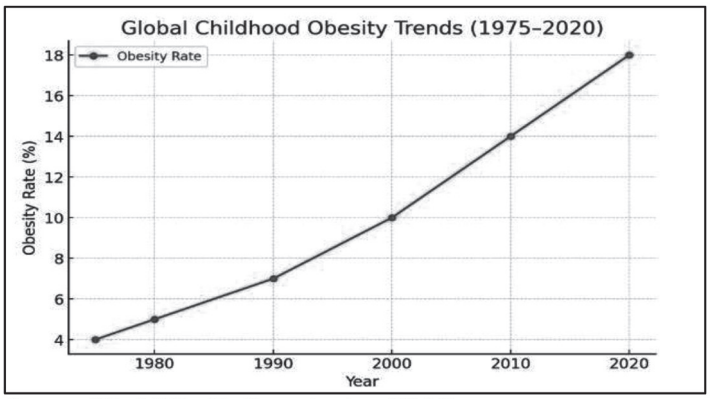
Introduction

Childhood overweight and obesity increase the risks of health complications in the later part of life regarding chronic diseases, including mostly non-communicable diseases (NCDs) including diabetes type 2, cardiovascular diseases and certain cancers. In addition to biological well-being, the psychological effects, such as feelings of shame and low self-esteem, are always severe and long-term. Fast food ads have been attributed to unhealthy diets due to the adoption of persuasive media techniques and urbanization practices have been associated with reduced physical activity and little or no access to healthy foods. Due to the severity of such problems, it is critical to comprehend the causes and social factors associated. Eradicating childhood obesity is paramount in the efforts to produce a healthy gene pool for the future and to reduce the effects of NCDs within the world's population.

Overview of the Global Rise in Childhood Obesity

Overweight and obesity have become an international concern among Socio-Demographics and millions of children in the various social, economic, and geographic classes. The disparities in overweight and obese children in the age of 5–19 years have increased significantly from reaching 4% in 1975 to over 18 % in 2016, as the World Health Organization (WHO) stated (see figure 1)

Figure 1: Global Childhood Obesity Trends (1975-2020)



Source: World Health Organization (2016)

The issue is no longer observed only in developed countries; low-and middle-income countries too are experiencing particularly high incidence due to factors such as urbanization, dietary changes, and behavioural transitions.

Obesity is an increasing problem among children and the key factors that prolong this menace include fast food advertisements and urbanization. The fast-food industry spends millions of dollars on advertising techniques, appealing to young people by using attractive colours, easy-to-recognize characters and bonuses like toys and price cuts. Such advertisements, which are normally aired on digital media, television and most of the public areas, build a very strong positive link between fast food and feeling good thus making it quite difficult for children to make healthy food choices. Urbanization makes it worse because it changes living habitats. Population densities arising from urbanization accelerate population growth, restrict plant coverage, and easy access to exercise facilities and fast food eating joints. Consequently, fast food advertising and urbanization make it difficult for children to eat healthy and exercise. A particular emphasis is given to understanding of these factors to design adequate prevention and control strategies. Understanding how advertising and urbanization are related can help to design the next steps in public health strategies that focus on ways to prevent child obesity and create good living conditions.

Literature Review

Correlation Between Fast Food Advertising and Children's Eating Behaviours

Studies show a strong link between the advertisements of fast foods and children's consumption patterns. TV programs, programmes, and food adverts tend to appeal to the young ones; they change their preferences, thus over time this leads them to demand more of the calorie-rich, low-nutrient foods (Smith et al., 2022). Research shows that consumers will develop high tendencies in consuming fast foods, evidenced by obesity and lots of related vices as provided in Figure 2 (Harris et al., 2021).

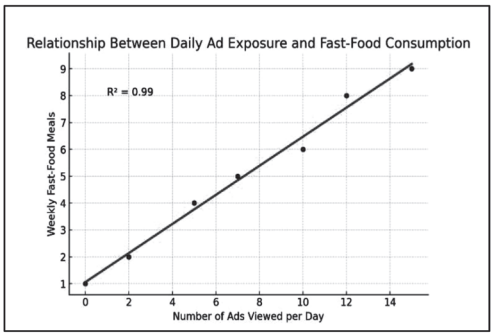


Figure 2: Relationship Between Daily Ad Exposure and Fast-Food Consumption

In addition, there are skimming marketing strategies such as gaming and endorsements by famous personalities that extend this trend by advertising directly to children through social media exposed to (Qiu& Jiang, 2023). Interventions to prevent children's access to unhealthy foods through advertisements are promising because prior calculation, policy interventions such as in the UK have targeted them (Hawkes, 2023).

Urbanization and Its Impact on Physical Activity and Dietary Habits

The social factors that are prompted by urbanization have significant effects on physical exercise as well as proper food consumption. Density in urban areas implies that people spend most of their time confined in buildings and rely on passive forms of transport such as cars (Sharma et al., 2023). Moreover, urban settings influence nutritional transitions that involve a higher intake of processed foods due to time stress and the availability of fast food outlets (Nguyen et al., 2022). According to a systematic analysis conducted by Zhao et al. (2023), patients staying in urban areas are more likely to be affected by obesity and other chronic diseases as compared to patients living in rural areas, as provided in Figure 3.

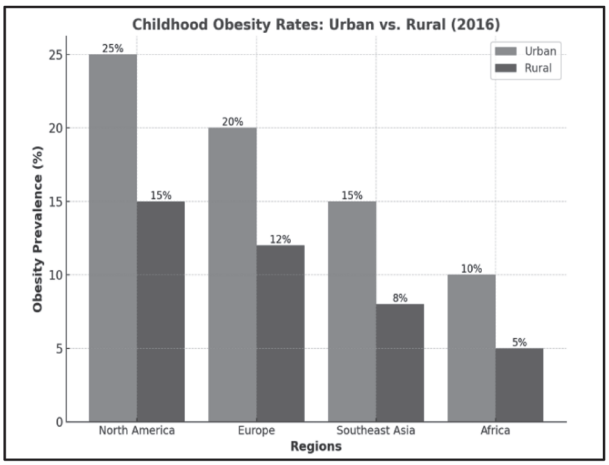


Figure 3: Childhood Obesity Rates: Urban vs Rural (2016)

Figure 3 depicts that North American children in urban locations have the most reported obesity rates (25%), while childhood obesity rates in rural areas stand at 15%. In Europe the urban region experiences 20% obesity cases against 12% in the rural region. The obesity rates in Southeast Asia are lower compared to other regions, yet urban locations (15%) have approximately double the rates of

rural areas (8%). On the part of Africa, urban obesity rates exceed rural figures by reaching 10% while rural areas remain at 5%. However, there are strengths that urbanization offers in respect to public health including establishment of walkable city and urban gardening to influence positive lifestyle and health respectively (Jones & Roberts, 2022).

The Psychological Influence of Marketing Strategies on Children

Pro-marketing activities affect children's psychological behaviour and food selection. Promotion tools such as cartoon personalities, attractive boxes, and the appeal to emotions help in brand appeal and consumption memory of young consumers (Miller et al., 2022). The study reveals that children are highly susceptible to influence by marketing communication because they can barely reason and distinguish between the reality portrayed by the adverts (Livingstone & Helsper, 2023). Marketing stimuli have been found in neuroimaging to elicit signals in the reward circuits of the human brain making the advertised products more appealing (Kohli et al., 2022). Further, these effects are compounded mainly through unique advertising, engaging and often gamified content (Smith et al., 2023). Legal interventions have been found to show effectiveness in reducing the psychological effect of advertisement control; for instance, boards and displays are prohibited during children's television time (Johnson & Patel, 2023).

Socio-Economic Disparities and Access to Healthy Food in Urban Settings

Despite the improvement of socio-economic status, there are increased constraints by higher socio-economic status in obtaining healthy foods in urban areas. Food deserts, or low-income neighbourhoods, do not have access to affordable and quality foods, while on the other end, food swamps are full of fast food outlets (Williams et al., 2023). These include the cost of fresh produce, low affordability and inadequate transport means for the urban poor populace (Garcia et al., 2022). Lee et al. (2023) have established that children with low family income are more likely to suffer from diet-related diseases such as obesity and diabetes because of poor and limited access to health foods. These inequalities have been addressed that may include subsidies on fresh produce and the launching of urban gardening (Green & Taylor, 2022). Nonetheless, some macro-social factors like income difference and poor urban design carry forward socio-economic disparity in healthy food (Brown et al., 2023).

Table 1: Recent researches on childhood obesity highlighting advantages, disadvantages and the research gaps

Author(s) &Year	Study Focus	Advantages	Disadvantages	Research Gap
Smith et al. (2023)	The role of fast-food advertising in influencing children's dietary choices	Clearly established the relationship between ad exposure and consumption of unhealthy foods especially to children.	Clearly established the relationship between ad exposure and consumption of unhealthy foods especially to children.	There is little analysis on which form of parental mediation can reduce the impact of advertising.
Johnson & Taylor (2023)	Urbanization and its correlation with the rise of childhood obesity in developing countries	Focusing on the effects of lifestyle and food environment shifts as a result of a growing urban population.	Failed to address diversity of the economic and social status of people in urban areas.	Lack of emphasis on areas where developmental behaviours may occur in transitional rural-urban settings.
Kim et al. (2022)	Psychological effects of fast-food branding on children	Brought focus towards explaining the subconscious impact of branding through experiments.	Sample size was small; this reduces the level of significance obtained.	there is no cross-sectional research to investigate the effect of branding on diet behaviour in the long run.
Patel & Singh (2022)	Comparative analysis of fast-food consumption trends in urban vs. rural children	Cross-sectional study of urban to rural children's fast food intake.	Supplied a comprehensive set of data concerning the difference in dietary rates of urban and rural children.	Focused only on the geographic area within one country, which leads to failure to examine the role played by cultural factors in affecting fast foods' consumption patterns.
Chen & Liu (2021)	Effectiveness of government regulations on fast-food advertising aimed at children	Focussed on the effects of advertisement restrictions in minimising childhood persuasion to unhealthy foods.	Major use of secondary data; a smaller number of actual observations.	Failed to examine the effectiveness of self-regulation strategies implemented by the fast-food sector.

This paper explores key studies in the literature that examine the relationship between fast-food advertising, urban growth patterns, and their impact on child obesity rates. While some studies have typically analysed these factors individually (Smith et al., 2023; Brown et al., 2021), this paper investigates their collective influence on children's dietary behaviour and physical activity patterns. Additionally, it examines the effects of branding duration (Kim et al., 2022) through studies on absent parental mediation techniques, which assess changes from rural to urban environments (Johnson & Taylor, 2023). Consequently, this comprehensive framework enables researchers to develop targeted policy interventions.

Research Questions and Objectives

Key research questions include:

1. In what ways does participation by children influence their food option and intake from fast food adverts?
2. To what extent can urbanization be described as either a protective or risk factor of children's health in terms of dietary habits and physical activity?
3. In what ways do these factors work in combination to cause childhood obesity, and what are the policy implications?

To find answers to these questions, this paper primarily aims to explore the effect of fast-food advertising and urbanization on the increased rate of childhood obesity across the world. This is in a bid to determine the magnitude of these factors on children's dietary behaviors and physical activity, as well as their health status.

Research Methodology

The paper explored childhood obesity factors by combining multiple data collection methods to study fast-food advertisements along with urbanization effects. A systematic literature review processed professional journal research together with government documents and database-reported materials. The World Health Organization (WHO) and other global health organizations referred for quantitative data for both obesity pattern analysis and advertising contact measurement. Case studies involved qualitative investigation of McDonald's Happy Meal marketing together with Copenhagen's cycling infrastructure planning to understand their practical manifestations. The analysis of policies included checking current regulations in both

UK and Chile to identify how properly they are enforced and which areas need further improvement, such as the UK's progressive restrictions on junk food advertising and Chile's pioneering food labelling and marketing regulations, offering diverse insights into policy effectiveness in combating childhood obesity. The combination of multiple data sources during triangulation procedures helped validate research findings through academic and empirical material comparisons. The article relies on secondary data while taking into account policy implementation discrepancies between different regions through the utilization of wide geographical sampling.

The paper includes studies from various countries to provide a global perspective on childhood obesity, considering both high-income and low-to-middle-income regions. Countries with significant urbanization were chosen to analyze how city environments impact dietary habits and physical activity. Additionally, nations with notable policy interventions, like the UK and Chile, were included to evaluate the effectiveness of regulations on fast-food advertising and food accessibility. This diverse selection helps highlight socio-economic disparities, marketing strategies, and the structural factors contributing to childhood obesity worldwide.

The article adopted a narrative synthesis method to explore empirical evidence by grouping results based on dietary consequences of marketing campaigns and urbanization trends and policy execution assessment. The approach enabled researchers to make contextual interpretations across all types of studies that were heterogeneous.

The article inclusion criteria specified that only literature containing (1) children between the ages of 5 and 19, (2) investigations of fast-food marketing or urban environmental factors, and (3) alongside empirical data or policy analysis would be accepted.

The article excluded research that (1) included only adult participants, (2) failed to connect with obesity outcomes, and (3) contained non-peer-reviewed opinion pieces.

At last, the paper examines the interplay between fast-food marketing and urbanization in driving childhood obesity by following a structured approach, including an introduction, literature review, research methodology, case studies, policy analysis, and recommendations. Further, it explores

advertising strategies, urban dietary influences, and socio-economic disparities, concluding with policy suggestions for healthier urban planning and stricter marketing regulations.

Fast Food Advertising and its Influence on Children

Targeted Marketing Strategies

Unfortunately, fast food firms use various forms of marketing that directly influence children and include digital ads, TV ads and sponsorships. Internet commercials, especially those on the social networks and games, take advantage of children's interest in technology by using bright pictures and captivating animations. Research has revealed that it leads to improved brand familiarity on one hand, while on the other hand, it provides children with information that supports regular fast-food consumption, which is wrongful as provided in figure 4 (Smith et al., 2021).

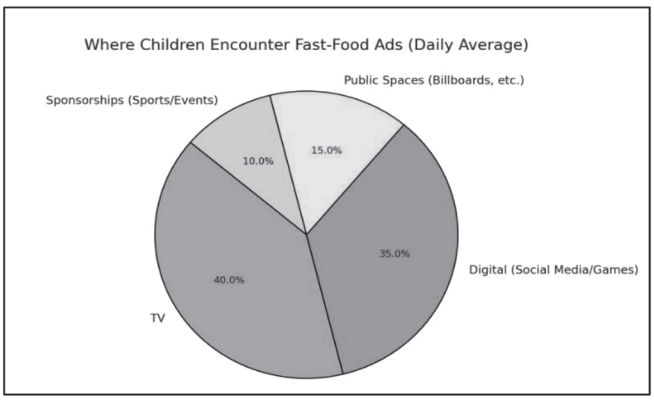


Figure 4

These are marketing strategies that are directed at children without consideration of parents' control targeting children's desires. Some countries have recommended certain rules in respect to the subordinate exposure to fast food advertising, but their implementation differs enormously across different nations (Harris & Schwartz, 2020).

The Role of Branding and Promotional Tactics

Brand allegiance and related marketing approaches are central to influencing the young people's food choices. Logos and characters for fast foods enhance the branding of products, while distinct packaging helps make early impressions on the minds of customers who are usually young. For instance, using brand characters like Ronald McDonald has been found to have a huge

impact on children; most of the time they go against their healthier choice (Chang & Chen, 2022). Such things as toys in kids' meals, discount coupons, and loyalty plans increase brand loyalty and ensure the constant ingestion of fast food. These tactics exploit children's relatively small ability to critically assess marketing information and build up good attitudes towards fast foods. Studies show that when kids are given branded packaging and promotions to ask for the food and get it even if it is unhealthy (Pettigrew et al., 2021).

Case Studies of Fast-Food Marketing Campaigns

Some of the best examples of fast-food marketing show how the companies manage to market their products to children. For instance, McDonald's "Happy Meal" program involves action figures, cheerful boxes, and movie characters appealing to kids. Research has shown that kids correlate it with joy and pleasure; therefore, they demand meals hard with the logo emblazoned all over it (Hammond & McPherson, 2023). Likewise, the business of using games as a promotion tool where people play to get offers on meals that are served at Burger King comprises entertainment marketing to enhance brand identity (Taylor & Jones, 2022). Another example is KFC, which sponsors youth sports leagues to make itself recognizable and popular among children participating in the teams and their parents. Critics of public health suggest that such campaigns detract from attempts to promote durable healthy eating behaviours among kids. Recent self-regulatory codes of conduct in countries like the UK and Chile for restricted marketing of children's fast foods are promising, but their effectiveness is fairly hindered due to efficacy issues with enforcement of these regulations due to the complex and continuously improving nature of marketing strategies.

Urbanization and Lifestyle Changes

Impact of Urban Environments on Physical Activity Levels

Several, and perhaps the most compelling, cross-cutting socio-environmental factors affecting physical activity levels are rooted in urban settings and include lack of play facilities, safety, and planning with transport infrastructure that discourages walking and cycling. A typical urban centre is characterized by high population density, minimal space for vegetation, playgrounds or recreational facilities, and gets people, particularly children, discouraged from going out to play. Other factors that also limit active movement

include high traffic, crime rates and pollution, adding up to the safety threats. A similar study revealed that physically active people in the urban environment are, on average, lower than the physically active people in rural environments (Sallis et al., 2016).

Increased Availability and Convenience of Fast Food in Urban Areas

Increasing urban presence has resulted in increased access to fast foods, which have a massive impact on the diets of a society. A cross-sectional study specifically focuses on fast food restaurants, knowing that urban centres are dominated by such indicators. Due to the demanding schedules of working people, consuming such will only worsen their diets and thus put them at higher risk of obesity and other non-communicable diseases (Drewnowski & Rehm, 2013). Furthermore, excessive advertisement and availability of fast food dominate the market and additionally, healthy options are not popular.

Influence of Urban Infrastructure on Dietary Habits

Habits of eating are influenced by access to food in cities and unearthing how food is accessed and distributed. One of the most common problems for residents of many modern big cities is the lack of fresh fruits, vegetables and other healthy foods, called food deserts. On the other hand, the overabundance of unhealthy food choices during food deserts makes poor diet worse (Cooksey-Stowers et al., 2017). Coupled with urban sprawl and a hard time with well-developed transport networks, accessibility to fresh and healthy food remains poor and the citizens are forced to resort to foods that may not be so healthy for them but are easily accessible. Food advertisements consume more and develop preferable tastes for calorie-dense foods with minimal nutrients (Smith et al., 2022). According to the WHO, effective policies to limit the marketing to the kids should include the following specific restrictions on all kinds of marketing promoting healthy eating (WHO, 2021).

Analysis of Urban Planning Policies Promoting Healthy Lifestyles

Urban planning has been shown to be detrimental to public health by constraining chances of physical activity and healthy eating. Measures that focus on increasing pedestrian and bicycle accessibility or ensuring a large number of parks are integral to this process too. For instance, with reference to detailed approaches to Copenhagen's city planning involving cycling lanes as

well as several parks, obesity prevalence in any given population has reduced by half after twenty years (Gehl, 2020). Research points out that environments that incorporate features encouraging walking create higher levels of physical activity and less sitting (Frank et al., 2021).

Success Stories of Policy Interventions in Combating Childhood Obesity

There are good examples of policy solutions that positively affect child obesity trends. The Chilean law established in 2016 an effect on the labelling of foods which required putting warning messages on foods with high calorie, sugar and sodium; its impacts reached a consideration of sugary drink reduction among children, with an effect of 24 percent (Reyes et al., 2020). Likewise, the concept of '*Shokuiku*' in Japan emanates education on Shokuiku of nutrition and healthy eating and the country holds one of the lowest global rates of childhood obesity currently (Matsumoto, 2018). The revised school meal standards by the Healthy, Hunger-Free Kids Act of the United States had a positive effect on dietary quality for children, especially in the low-income bracket (Cohan et al., 2021). These examples demonstrate that local context-adapted evidence-based policies can substantially affect childhood obesity prevention.

Recommendations

Policy Recommendations for Regulating Fast Food Advertising

The negative impacts of fast foods on the health of people should therefore lead governments into drafting more stringent laws against fast foods' advertisement. Key measures include:

- **Limiting Advertising to Children:** Regulate or even completely prohibit fast foods from placing their products' advertisements in programs watched by children, on social networks, or during peak hours.
- **Mandatory Disclosures:** Prosecute advertisers to provide correct nutritional information when they are placing an advert of the product to avoid making categorically false claims that it has no calories or low sugar, and unhealthy fats.
- **Promoting Healthy Alternatives:** Call for specific legislation to require fast food chains to make a proportion of the money spent on advertising to advertise healthful products.

- **Taxation on Junk Food Advertising:** Increase taxes paid on communicating unhealthy foods, and use the proceeds to promote good nutrition.
- **Collaborations with Schools:** Limit advertising agreements between fast food joints and schools to reduce the extent to which the fast food is marketed in school.

Urban Planning Strategies to Encourage Physical Activity and Healthy Eating

Urban design can play a pivotal role in fostering healthy lifestyles. This includes:

- **Walkable Neighbourhoods:** Build walkable communities with smooth and well-lit sidewalks, biking lines and beautiful parks where people can comfortably engage in walking and cycling.
- **Community Gardens and Farmers' Markets:** Establish openness for farming by involving opportunities for community gardening and supporting farmer's markets in the urban areas.
- **Zoning Laws for Food Retail:** Use zoning regulations in the prevention of new sites for fast food while encouraging grocery marts and healthy eating joints.
- **Safe Recreational Spaces:** The public fitness facilities should be safe, adequately lit and easily accessible to promote effective physical workouts amongst all people.
- **Public Transportation Accessibility:** Build up public transportation networks to link housing estates and potential sources of exercise and healthy foods within a reasonable walking distance from fast foods around the transit stations.

School- and Community Based Interventions

A comprehensive approach should be used to fight childhood obesity, which results from fast-food advertising together with urbanization. Authorities should introduce new rules that limit fast-food advertisements shown to children through every media channel while requiring food manufacturers to display nutritional information. Schools must provide two key components: required health education following the Japanese Shokuiku model, as well as an outright

ban on fast-food marketing collaborations alongside subsidized nutritious food options. The implementation of community-based interventions must involve planning for neighborhoods that people can walk through as well as creating safe playground areas with community gardening spaces so residents can exercise more while accessing fresh vegetables.

Policy Suggestions for Addressing Childhood Obesity

A successful strategy against childhood obesity needs an approach that brings together different sectors. National governments need to establish sugar taxes to complement advertisement restrictions and provide healthy dietary choices throughout school facilities. Better healthcare financing with expanded insurance coverage helps patients to obtain early diagnosis and receive proper treatment. Communities must use public-private partnerships to create physical activity programs based in their communities. Early education of healthy behaviour requires schools to include health education in their curriculum. A necessary partnership exists between public and private organizations and non-profit groups, which need to develop location-based policies that reduce social inequality as well as promote sustained health benefits.

Conclusion

The emergent links between the dynamics and complexities of subsequent public health crises and the policy framework are embraced. The most important conclusions put emphasis on the need to use the multiple-professional interventions in tackling the health inequalities, increasing the healthcare utilization and improving the preventive measures. As we have seen earlier, socio-economic disparities, weak access to health facilities, and a changing disease risk profile add up to health challenges worldwide. The analysis establishes that the process of solving public health dilemmas presupposes more than the application of medical science; it calls for a sound policy agenda compatible with the public health agenda. Therefore, this study concludes that the way forward is to align the principles of public health with policy changes of the highest order. This approach of integration and innovation will be of help in the worldwide fight against the health challenges of the twenty-first century.

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THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009: A CRITICAL ANALYSIS

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Abstract

The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as RTE Act), is a landmark law that ensures elementary and primary education in India. Article 21A of the Constitution of India and the RTE Act mandate free and compulsory education for children between 6 and 14 years old. This paper critically examines the Act's key provisions, focusing on its purpose, legal framework, and judicial interpretation. Special emphasis is placed to the role of School Management Committees (SMCs) constituted under Sec 21, the child-centered approach and the constitutional challenges faced by private unaided schools. Furthermore, the paper discusses the impact of the Supreme Court judgments on implementing the Act. The findings indicate that the Act has strengthened access to education, but challenges remain in its implementation, especially in ensuring inclusion and equitable distribution of resources. Finally, the paper concludes by advocating for strong policy measures to enhance the effectiveness of the RTE Act.

Keywords: right to education, Article 21A, constitutional & judicial interpretation, school management committee, constitutional challenges

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Introduction

The subject of "Education" has always been of continuous universal significance because it lays down the firm foundation of any politically organized civil society and its social order. Indeed, it is perhaps the most potent weapon which enables the State to fructify its public policies by moulding and even unifying the understanding and resolve of its people on some rational scientific basis. In India, the subject of right of children to free and compulsory education is of immense fundamental importance. Unarguably, it constitutes the very basis for the meaningful functioning of our democratic political system. In this respect, the reference was to the constitutional commandment contained in Article 21A, which was introduced into the Constitution by the 86th Amendment Act of 2002 with effect from April, 2010. It makes right to education as the fundamental right by proclaiming: "*The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine*".

Seemingly, this is a very simple provision to look at, but it has the unique potential to bring about a silent qualitative change in the life of an individual as individual and also in the life of our democratic polity.

What is the connotation of the expression, "free and compulsory"? The meaning of "free" one can easily comprehend or understand, but what about "compulsory"? Connotatively, and not just literally, it refers to the State of social health of the large segment of our society, which has stepped into deep poverty, ignorance, superstition, a society in which the people do not have even a ghost of an idea, what 'education' is and what it should mean to them. They are least aware that education is their inalienable fundamental right, a right to live-not just to live, but to live with human dignity.[2] It is the children of a social segment of our society that need to be addressed. Their parents or guardians need to be persuaded, and pressurized if so required, to send their children for 'free and compulsory' education. They are to be 'enabled' to receive education by removing the letters of poverty coupled with superstition and ignorance. Looking at the sheer overwhelming number of such children-quoting the mere statistics of such children as just meaningless-the crucial question is how the

State is going to discharge such an onerous responsibility?[3]

What does Article 21 of the Constitution tell us on this count? Obviously, it confers on the State exceptionally very wide and unqualified power by simply stating that such an obligation is required to be fulfilled "in such manner as the State may, by law, determine."

If one reads this statement closely, it seems to suggest that the only condition imposed by Article 21 on the State in relation to exercising of its power to provide 'free and compulsory education to all children of the age of 6 to 14 years' is that such power may be exercised only through the intervention of 'legislative' 'law', and not by any 'random', 'arbitrary' or 'capricious' 'executive' action. But this is not something new about which we should feel worried or surprised. This is merely a re-statement of the doctrine of separation of powers, which obliges us to bear in mind that any executive action of the government should be duly supported by the law enacted by the legislature or Parliament, and the function of the judiciary is to ensure that both the legislature and the executive remain within the limits of their respective domains as determined by the Constitution.

The term 'law' under Article 21A of the Constitution simply means a proper law enacted by the legislature, a law which lays down policy perspective and provides for suitable strategies which are transparent and clearly reveal how to realize the constitutional objective-the objective of providing free and compulsory education to all children. Such a law, of course, would inherently be termed as 'a reasonable law'.

In carrying out of this constitutional mandate under Article 21A, the Parliament ordained the law namely, "*The Right of Children to Free and Compulsory Education Act, 2009"*. This Act came into force with effect from April 1, 2010, the date on which article 21A of the Constitution under which the said Act had been enacted, itself came into effect. The coincidence of the dates of both enactments suggests that there should be no delay between the constitutional commitment and its concretion by the Parliament, thereby implying that the state should act without delay to fulfill its constitutional commitment.

3 Virendra Kumar "The plight of children to free and compulsory education Act, 2009: A juridical critiques of its constitutional perspective" published in book titled "Criminal law, criminology and administration of criminal justice" authored by K.D.Gaur, published by Central Law publications, 4th edition, 2019 at p. 148.

What is the core objective of this Act? This Act is "anchored in the belief that the values of equality, social justice and democracy and the creation of just and humane society can be achieved only through a provision of inclusive elementary education to all the children."

Do all children need free and compulsory education? Certainly not those who belong to the privileged sections of society, because they do not. They already receive far more than the minimum required by others who are not as privileged or in as favorable a social position. So, how do we identify the children who desperately need 'free and compulsory education'?

The Right of Children to Free and Compulsory Education Act, 2009 itself identifies the targeted beneficiaries of free and compulsory education. These are the children belonging to vulnerable sections and disadvantaged groups of society who, mainly due to poverty, ignorance, and other factors, are unable to access even the universal elementary education. However, to provide 'free and compulsory education' to a vast, sprawling, segment of such children in our society, and that too without any more delay, with all the continuing constraints, is indeed a very tall order. We are already 50-60 years behind in fulfilling the promise of providing free and compulsory education to all children between 6 to 14 years. Therefore, the question arises: what strategy has the Parliament adopted under the Act of 2009 to achieve this objective of providing 'free and compulsory education to all children' without further delay?

One may decipher at least two-fold strategy; one in terms of the clear direction that we should take by adopting what we call, the child-centric approach making the child as the right-bearing unit and emphasizing the re-orientation of the teachers which is primarily child-friendly, the other one is how to realize the child-centric approach with all the continuing constraints of resources without any more delay.

Child Centric Approach

Every child between the age of 6 to 14 has the right to free and compulsory education. This statutory declaration implies that every child must be treated as a full-fledged human being and not merely as an inert object without fundamental

freedoms. This right is not merely statutory, but a constitutional fundamental right with a distinct character and broader connotation. It is not just an enforceable right before the courts, but something much more with a complexion that one that holds true significance and fundamental importance. Specifically,:

- Proximity to school: Every child shall have the right to admission in a "neighborhood school".
- Right to basic education is a continuing right: Every child shall have the right to continue receiving education "until the completion of elementary education."
- Economic Freedom: No child "shall be liable to pay any kind of fee or charges or expenses that would prevent them pursuing and completing elementary education."4
- A Child's disability is not a barrier to education: A child with disability shall have the right to pursue free and compulsory elementary education in accordance with special provisions as laid down in Chapter V of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996.
- Priority for disadvantaged groups: Priority should be given to children belonging to 'disadvantaged group"[5] and 'weaker section'[6] to ensure that they are not discriminated against or prevented from pursuing and completing elementary education for any reasons.[7]

Teacher's Re-orientation vis-à-vis child: The teacher entrusted with the responsibility of imparting elementary education is required to re-orientate himself as per the new curriculum and re-defined evaluation procedure prepared by the academic authority, which is legislatively enjoined to take into

4 See Section 3(2) of The Right to Education Act, 2009.

5 Child belonging to disadvantaged group means a child belonging to the scheduled caste, the scheduled tribes, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor , as may be specified by the appropriate government by notification. See Section 2(d) of the RTE Act, 2009.

6 Child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower that the minimum limit specified by the appropriate government by notification. See Section 2€ of the RTE Act, 2009.

7 Section 9(c) of the RTE Act, 2009.

consideration the following facets:[8]

- Compliance with the constitutional values of equality and non-discrimination;
- Holistic development of the child;
- Development of child's knowledge, potential and talents;
- Enhancement of physical and mental abilities to the fullest extent;
- Learning through activities, discovery and exploration in a child friendly and child-centered manner;
- Providing instructions, to the extent as far as possible, through the child's own mother-tongue.
- Alleviating fear, trauma and anxiety and helping the child to express views freely; and
- Comprehensive and continuous assessment of child's understanding and ability to apply the same in real-life situations.

Realization of Child-centric Approach: In this respect, the two functional strategies that come to the fore which may be termed as, 'immediate' and 'remote or deferred' are:[9]

- Immediate: it is the strategy of exploiting in the first instance the infrastructural facilities and all other resources of all the existing recognized schools, including the state-owned, state-supported, and private unaided schools.
- Remote or deferred: It is the strategy of opening new neighborhood schools for making the universal elementary education accessible to all the children without belonging to weaker section and disadvantaged group in the neighbourhood. The essential components of these two sections may be abstracted as under:

8 Section 29(2) of RTE Act.

9 Although to fulfill this constitutional mandate the legislature has adopted a multi-pronged strategy, focusing simultaneously on the child the recipient of education.: his parents or legal guardian-the persons who are responsible for the education of the child; the providers of education, such as teachers, persons who establish and run educational institutions, both in public and private sectors with or without stateaid; and overall responsibility lying with the state to ensure that all the stake holders work "in manner as the state may, by law, determine ," nevertheless for the purpose of the juridical critique the author has resorted to two-fold broad classifications of all the relevant legislative measures.

Section 12(1) of the Act, defines its scope in three clauses:

- Clause (a) refers to the recognized state-owned or state-controlled schools, which must admit all such children without any discrimination. Their obligation is absolute concerning the children admitted.
- Clause (b) refers to the recognized state-aided private schools, whose obligation to provide free and compulsory education extends "to the proportion of admitted children that corresponds to the percentage of annual recurrent aid or grants received in relation to their own total annual recurrent expenditure, with a minimum requirement of 25%.
- Clause (c) refers to the recognized unaided private schools, which must admit at least 25% of the children belonging to weaker section and disadvantaged group in the neighborhood in Class I and provide them free and compulsory elementary education until completion, and are entitled to be compensation for expenses incurred per child.

Furthermore, under Section 18 if the recognized unaided school fails to comply with this obligation, it will be liable to pay fine or face the consequence of derecognition if it has already obtained the recognition.

In enforcing the provisions contained in three clauses, different kind of problems have come to the fore. In respect of clause (a), the objective of truly providing free and compulsory education could not be achieved fully and satisfactorily, because most of these schools lack even the basic infrastructural facilities, say, in terms of proper class rooms, black boards, drinking water, toilets, modicum of a library, playground etc. so far as recognized aided schools of both complexions whether of minority or non-minority falling within the ambit of clause (b) are concerned, there is not much difficulty in enforcing their obligation for providing 'free and compulsory education' to a limited number of children belonging to weaker section and disadvantaged group of society. However, contentious issues arose in relation to the recognized private unaided schools falling in clause (c), who resented and resisted the enforcement of these provisions under the threat of 'fine or de-recognition' as envisaged under Section 18(3) of the Act, not because of paucity of resources, but they vehemently challenged their constitutional validity of the Act in the Supreme Court as a violation of their fundamental right.

The core contentious issue in the implementation of the Act that has gained prominence is Whether the application of Section 12(1) (c) read with Section 18(3) of the Act, to recognized the unaided private schools is constitutionally valid ? This issue was directly raised before a three-judge bench of the Supreme Court in *Society for Unaided Private Schools of Rajasthan v. Union of India*,[10]

What is the law established by *T.M.A Pai Foundation*[11] *and P.A. Inamdar* [12]on articles 19(1)(g), 29(2) and 30(1) of the Constitution with respect to unaided private educational institutions? In this regard, Radhakrishnan, J. sums up the law as established in the 11-judge bench decision of the Supreme Court as follows:

"*Pai Foundation and Inamdar* cases have categorically held that any action of the State to regulate or control admissions in the unaided professional educational institutions, thereby compelling them to allocate a portion of their available seats to candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions, would amount to nationalization of seats. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions, it was held, are acts constituting serious encroachment on the right and autonomy of private unaided professional educational institutions and such appropriation of seats cannot be held to be a regulatory measure in the interest of minority within the meaning of Article 30(1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution, insofar as the unaided minority institutions are concerned."

The gist of this summary statement is that in *TMA Pai Foundation Case* (2002), the Constitution Bench of the Supreme Court, by majority ruling, held that the State is constitutionally precluded by Article 19(1)(g), read in conjunction with Articles 19(6) and 30(1) of the Constitution, from reserving seats for students belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes in private unaided educational institutions. While interpreting Article 21A, the Supreme Court in *Society for Unaided Private Schools of*

10 (2012) 6 SCC 1.
11 T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.
12 P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537.

Rajasthan v. Union of India[13], held that the State can impose obligations on private schools to ensure the fulfillment of this fundamental right. However, minority-run institutions were exempted, giving rise to debates on equitable access to education.

Now let us examine the judicial approach of the constitutional perspective of the right to education by critically examining the holdings of the Supreme Court in both the cases. A bare reading of the two abstracted statements from the minority judgment reveals the different approach of the minority court in determining the issue of constitutional validity of section 12(1)(c) of the Act of 2009. It is different because, instead of examining the constitutional validity of section 12(1)(c) in terms of the language of article 21A of the Constitution as the majority court has done, minority opinion examines the constitutional validity of Article 21A of the constitution in terms of the propounding of 11-judge bench decision of the supreme Court in TMA Pai Foundation case (2002), which had laid down that the state had no right to interfere in the matters of admission in the private unaided schools. Since Article 21A is to be read in consonance with T.M.A Pai law, section 12(1)(c) of the Act becomes ipso facto unconstitutional. This indeed is the point of deviation in terms of the 'basic approach' pursued by the minority court in its opinion.

The logical corollary that follows is that a private school imparting secular education can do without state-aid but not without state recognition. This also shows the primacy of State-recognition over that of state-aid and invariably always a condition precedent for receiving any aid from the state.

Thus, on this count one may conclude by stating that it is the primacy of the state-recognition, and not state-aid, which is the basic concept evolved by the politically organized society with two-fold objective. On the one hand, the element of State-recognition is the protector of public interest by modulating the fundamental rights of an individual through the sanction of reasonable restrictions, and, on the other hand, it is the promoter of individual interest by adding value to it. Looked from this angle, in the instant case, 'public interest' is protected by persuading or prompting the private unaided schools to "supplement the efforts of the State" in providing free and compulsory education to all children, whereas individual interest is promoted by granting it the requisite State-recognition on the fulfillment of conditions laid down by

13 Ibid

it in the interest of society. Such a recognition, and not the financial assistance, that makes the private unaided educational institution instantly identifiable as a 'standardized school' or 'School of substance' and thereby it is much sought after by the people and the society at large without questioning its credentials.

If that is the case, would it be unconstitutional for the state to withhold recognition if the unaided educational institution does not abide by the stipulation spelled out by it in section 12(1)(c) of the Act ? This is especially relevant, when the primary purpose of that stipulation relates to the creation of inclusive social order by following the constitutionally proclaimed policy of providing free and compulsory education to all children, especially by reserving a fraction of seats for the children belonging to weaker section and underprivileged group in the neighborhood schools imparting secular education and that too not without some degree of compensation.

In fact, the lack of judicial appreciation of the primacy of State-recognition over State-aid is resulting into dubious trend of, what is described as, "Schools rush for Minority Status" for avoiding the social responsibility of providing even partly free and compulsory education to the underprivileged children as envisaged under section 12(1)(c) of the Act.

Concluding Observation

As far as the above mentioned discussion, deliberation, debate, dialogue, discourse and analysis of case laws are concerned, the right of unaided minority schools imparting general or secular education as envisaged under the Act should be regulated under Article 19(1)(g) read with clause (6) thereof, and not under the article 30(1) of the Constitution, which provides protection only for the preservation of minority culture, language and script, not for their secular or commercial education activities. It is necessary to abandoned the distinction between aided and un-aided educational institutions merely in terms of finance factor (both minority and non-minority) prioritizing 'state-recognition' over that of 'state-aid of grants' to create an 'inclusive social order' by reserving some space for children belonging to weaker section and disadvantaged group of society, which indeed is a paramount public interest whose protection is, the responsibility of the State.

For the full realization of Right to Education as a fundamental right under Article 21A, stronger mechanisms such as well-functioning School

Management Committees, strict enforcement of the 25% reservation for EWS students, and judicial scrutiny of private school compliance are essential. After a jurisprudential analysis of judicial interpretation in both the cases, it is concluded that both the courts in their respective opinions are ceased of the limits of Article 30(1) of the Constitution and also the value of recognition granted by the State,[14] but still somehow or the other the primacy of the factor or recognition has got lost in the process of decision making.

Last but not the least, the analysis of the constitutional mandate guaranteed by constitution of India and the RTE Act, in relation to the right to education and judicial interpretation, remind us our obligation that we owe to the Judges and the judicial system for their sustained growth, development, and contribution to the society at large.

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14 See, Society for Unaided Private Schools Case, for the relatedness of 'State aid' and 'State recognition', Radhakrishann, J. citing with approval the observation made in Inamdar(supra) states: "Referring to the judgment in Kerala Education Bill, 1957, In re (AIR 1958 SC 956; 1959 SCR 995) and St. Stephen (St. Stephen's College v. University of Delhi, (1992) 1 SCC 558), the Court took the view that once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition." See Society for Unaided Private Schools.

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PM POSHAN: ENSURING SOCIAL & ECONOMIC JUSTICE FOR SCHOOL GOING CHILDREN IN INDIA

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Abstract

Hunger among school going children deprives them of attaining a fully functional adulthood. Such children seldom attend schools; difficulty in focusing on classroom education, results in higher dropout rates. Provisioning of meals in schools is part of socio-economic justice initiative for improving attendance rates, learning ability, self-esteem & reducing dropout rates of the student, eventually diminishing hunger and malnutrition. Patriarchal and gender norms in families dictate that available food is first accessed by the male child and then by female child. Anemic and weak, these malnourished young girls after matrimony constitute the bulk of underweight pregnancies leading to high infant mortality and maternal mortality rate perpetuating this vicious cycle of poverty. Caste, class, religion and gender discrimination are a stark reality of India. Mid-Day Meal(MDM) scheme attempts to eradicate poverty and ensure that socio-economic barriers are diluted as children of all caste, religion and gender sit and dine together. Lamentably, due to factors of insufficient support from the government, rampant corruption, hygiene issues etc, the implementation of MDM was suboptimal. Thus central government decided to re-launch MDM as Poshan Shakti Nirman (POSHAN) Scheme, renewing focus on addressing hunger and improving the nutritional status of students. However without significant overhaul POSHAN too may underperform failing to achieve hunger free India. Child hunger and malnutrition varies across country, hence comprehensive vulnerability mapping based on anthropocentric data involving community and families must be undertaken to develop holistic understanding and solution to the problem. The top heavy model of PM POSHAN should be rearranged to equip & strengthen all stakeholders to analyse, identify, plan, implement and monitor the scheme helping in preventing child wasting, stunting and other factors. Emerging technologies such as Artificial Intelligence and Machine Learning can be used in detection, prediction and prevention of malnutrition, arresting India's slide in Global Hunger Index and Global Food Security Index.

Keywords: school meals, mid day meals, PM POSHAN, malnutrition, artificial intelligence, social justice

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Introduction

Children are some of the most vulnerable populations in the world (United n.d.). In any event of natural disasters, wars, armed conflicts etc, children form a disproportionate section of the victims (United Nations Global Compact, n.d.). Being unable to speak and fend for themselves, children have to bear the brunt of hunger and malnutrition. According to World Health Organization data, globally 2.3 million children died within 20 days of their birth in 2022 (WHO, 2024). In a study conducted by the drafting group of the Advisory Committee on the right to food on discrimination in the context of the right to food, it is estimated that almost a third of these deaths are linked to malnutrition (Golay et al., 2010). Many surviving children face diseases such as beri-beri, rickets, night-blindness etc caused due to deficiency of nutrients such as Vitamin A, B1, B2, B12, C, D, K, Iron phosphorus etc. (British Association for Parenteral and Enteral Nutrition, n.d.).

These catastrophes can be prevented or reduced with a proper nutrition and health care plan focused on children. Interestingly, the patterns of hunger and malnutrition in children are not uniform. A girl child in a poor and marginalized section of society is much more vulnerable to hunger. Cultural and patriarchal norms often dictate that available food is first accessed by the male child and then by the female child of the family (Baig-Ansari, 2006). This lack of nutrition and balanced diet severely hampers the growth and development of girl child often resulting in anaemia due to lack of Iron (Kumari et al., 2017). Parents see the girl child as a burden and deprive them of educational and vocational support rendering such females unable to eke out a living. Many of these girls are married at a young age where they face underage pregnancies. A combination of factors of anaemic underage-underweight mother with nutrient deficient diet coupled with lack of proper medical infrastructure causes many women and neonatal to perish during or after the child birth. This is one of the primary causes of high maternal mortality rate and infant mortality rate (UNICEF, 2008). Even if that girl child survives, she will grow up to be an underage-underweight mother continuing this cycle of poverty (Elder & Ransom, 2003). Over time the entire malnutrition affected community lags behind and becomes impoverished (Elder & Ransom, 2003).

No wonder child malnutrition has been termed as a silent emergency by

UNICEF (UNICEF, 2014). While diseases such as cancer and AIDS attract a lot of medical field and media attention, issues such as child nutrition and hunger fail to garner proper interest and attention from government and international agencies. Agencies like World Food Program struggle to secure proper funds to continue initiatives against hunger & malnutrition such as school feeding programs. Lamentably such a state exists despite the widespread knowledge that hunger and malnutrition ruin the productivity and earning potential of affected children. Hunger prevents the child from attaining a fully functional adulthood (Ke & Ford-Jones, 2015). A severely malnourished child is not able to lead a normal, healthy and happy life (Ke & Ford-Jones, 2015). In short hunger and malnutrition are a curse on the affected individual, family, society and nation. Experts estimate that low-income agricultural countries lose approximately 2-3 % of its GDP per year to malnutrition (Gragnolati, 2006).

It is in this light that school feeding programs have gained prominence. Over time they have emerged as a proven initiative to combat childhood hunger & malnutrition (Ke. & Ford-Jone, 2015). The practice of providing meals as part of school nutrition programs in the world is quite old. These programs have a documented history of being run in an organized manner in the city of New York since 1905(Alessandro, 2019). The vision of the pioneers of this program was clear to improve the health and educational prospects of some of the poorest children of the city. Since then such programs have gathered more steam across the world. According to estimates of the World Food Program an organization of United Nations, approximately half of the children of the world receive meals in their schools with many countries across the globe running their own school feeding program (WFP, 2019).

Objectives

The research was undertaken by the researcher to evaluate the new scheme of PM POSHAN. The practice of provisioning of nutrition to children through school feeding program in India is in practice from 1950s. However despite this the issue of childhood malnutrition in India continues unabated. One of the reasons for the uneven outcome of these schemes is that their on-ground implementation is far from ideal and rife with corruption and mismanagement. This study aims to suggest ways in which real time malnutrition can be detected

and timely interventions can be made. Additionally the study aims to identify innovative measures such as use of AI and ML which have been left out of the scheme by the government for addressing child stunting, wasting, anaemia and infant mortality.

Methodology

Research methodology adopted for the research included a detailed analysis of PM POSHAN scheme implemented by the Government of India including primary literature such as guidelines issued by government, press releases and the (PM POSHAN) Automated Reporting & Management System etc. The researcher analysed leading reports on the status of hunger and malnutrition in India such as The State of Food Security and Nutrition in the World (SOFI) 2024 and Global Hunger Index2024 to gain understanding about the major issues such as child stunting and wasting. The researcher also referred to national family health survey data to understand the status of malnutrition and hunger affected children in India.

Analysis

It is important to note that these school education and feeding program that many of the countries, international and civil society organizations operate are not charity rather they are part of distributive justice initiatives. Nutrition, Health and Education form the three pillars of functioning and development of any thriving nation (Food and Agriculture Organization, 2005). A nation with ill citizens cannot function normally and one of the important ways to safeguard health is to ensure optimum nutrition. The provisioning of adequate nutrition at the early age is important as if a person is affected by any deficiency or malnutrition diseases during childhood, then she has to endure the disease throughout her lifetime. Additionally the poor section of the population sees children as helping hands and expects them to share economic and family burdens such as generating additional income for the family or to take care of siblings etc (CRY, 2024). They also believe that sending children to school will pose an economic burden for the family (CRY, 2024). In such scenario they are less likely to send their kids to schools. In the short term the child may be able to earn extra money for her family through use of their labour, but in the long term it poses serious repercussions for the family and society.

Thus the school feeding programs incentivise the parents to send their kids to schools. Even poor parents who are reluctant to invest in the education of their children feel inclined to send their kids to school as it will ensure a quality meal a day for the child. Attending schools brings its own benefits. The researcher believes that access to education makes the population educated and empowered. Education is also helpful in eradicating inequality between different groups and genders. An educated and empowered population is less likely to be exploited and taken advantage of. Such a population is aware of its rights and duties and can effectively participate in the governance of the country. They are more likely to raise voices against societal evils and prejudices. Provisioning of education to a child is an investment in human capital of the society. These endeavours bring multifaceted benefits for the society and the nation in the form of increased human productivity, decrease in the poverty rate etc. Poverty as a phenomenon is not only characterized by lower resources and lower income, but is also related to lower access to education and opportunities (Tilak, 2002). By investing in education, health and nutrition, a nation can over time break the cycle of poverty, remove monopolization of few over resources and uplift entire sections of population from poverty. Nobel Laureate Amartya Sen has heralded primary education as an enlargement of human capabilities, enabling a person to make better choices, reflect on their life, articulate their views as well as be able to enjoy a good life (Rajapakse, 2016). Investment in education also helps in lowering the urban rural gap (FAO. 2010). Lack of quality education is one of the factors which undermines the productivity, employability and the earning potential of the rural population. Investment in education also brings secondary benefits such as drop in crime rate, increased societal cohesion and bonding etc (Crews, 2009). An educated population understands the significance of laws and is more willing to abide by them (Crews, 2009). Thus instead of merely imposing laws, one way to create a law abiding society is to impart education (Crews, 2009).

Despite all these benefits, education did not have widespread acceptance among the poorer sections of the society. The school nutrition programs increased the acceptability and had a multiplier effect in increasing the admission and attendance rate at schools (PM POSHAN, n.d.). They were a major factor in convincing reluctant parents to send their kids to school. In India the practice was first started by Chennai Corporation Council in 1920 by providing 'tiffin' to

students of a local school leading to an increase in the attendance rate (Frontline, 2022). The idea was carried forward by Chief Minister K Kamraj who started free meal scheme in all government & panchayat run primary schools of Tamil Nadu in 1956-1957. The results of this initiative were impressive as during his tenure, the literacy rate increased significantly (Parliament Digital Library, n.d.). Gradually by mid 1980s Kerala, Gujarat & Pondicherry too had initiated their own universalized mid-day meal programs serving cooked meals to school children at primary level (PM POSHAN, n.d.). Finally these state wise initiatives culminated in the centrally sponsored mid day meal scheme.

Mid day meal scheme formally known as Nutritional Support to Primary Education commenced on 15th August 1995 (School n.d.). The scheme focused on providing nutritional support to students of primary classes I-V as the program was launched with the intent of universalizing primary education through increased enrolment, retention and attendance, at the same time also uplifting the nutritional status of the pupils. Initially the program was launched in 2408 blocks of the country which was later expanded to all districts of the country in 1997-1998. In September 2006 the scheme was expanded to include children from classes VI-VIII from the year 2008-2009.

By providing one nutritious meal per day, the central government has attempted to address the fundamental issues of education, nutrition and health, significant for the overall development of the children in the country. Historically too India had been plagued by the issues of caste, religion, class and gender based discrimination. MDM diminished these barriers by making children sit together, sharing a common meal (Samal & Dehury, 2016). Many schools have cooks from the scheduled castes, scheduled tribes & other marginalized communities, who prepare and serve meals to children fostering ties of affection and cordiality which transcend the boundaries of caste and class. As prejudices between the children diminished, the social malpractice and biases slowly eroded leading to a more cohesive society. MDM also had a positive impact of spurring more school enrolment of girl students thereby reducing the gender gap in girls education and nutrition (Si & Sharma, 2008). Uneducated, unempowered, the women had to endure hardships throughout her life. Reformers such as Raja Rammohan Roy, Savitribai Phule tried to mainstream the education of girls but there was a lot of hesitation and resistance to this idea in society (Kamat,

1976). Initially there were some schools catering to girl students, but they were restricted to daughters of affluent families (Kamat, 1976).

Mid day meal has served as a major facilitator of education. The scheme has improved health, life expectancy and quality of life of many beneficiaries across the country (PM POSHAN, n.d.). It has convinced unwilling parents to send their daughters to school (PM POSHAN, n.d.). It was in this light that Supreme Court in the landmark PUCL v UOI 'right to food' case directed all State Governments and Union Territories (UTs) to implement the MDM scheme by providing a meal containing 300 calories and 8-12 grams of protein each day for at least 200 days to all children enrolled in government and government aided schools (PUCL v. Union of India, 2001). The states who were earlier providing dry ration were instructed by the hon'ble court to switch to cooked meals within six months. Understanding the significance of the scheme and its resonating impact on nutritional status of the country, the scheme was made a part of the National Food Security Act 2013 (NFSA). Section 5(1)(b) of the act provided that one mid day meal was to be provided free of cost to all children until class VIII or of age group 6-14 years on all days except on holidays in all government, government aided and local body run schools (NFSA, 2013). This inclusion in NFSA provided legal backing for MDM and also provided the roadmap for its nation-wide implementation. The Act also stated that apart from distribution of meals, every such school would also have facilities for cooking these meals, drinking water and sanitation. While the onus of implementation of NFSA was on the State Government, the Central Government in exercise of powers conferred to it under S 39(1) and 39(2)(b) came up with the Mid Day Meal Rules 2015 to ensure improvement in quality of the mid day meals, better regularity in serving of mid-day meals and overall implementation of the scheme. The Rules provided for responsibilities of various School Management Committees, including the testing of MDM meals by accredited labs. Lamentably, despite consistent efforts by the judiciary, legislature and executive to ensure the effective implementation of MDM, the scheme has failed to achieve optimum outcomes (Kainth, 2013). Whether it be the issue of sub par performance of the scheme in eradicating malnutrition and hunger from children or the cases of children dying after consuming mid-day meal in schools (Samal, 2014), there have been many instances where the on ground implementation of the scheme was found wanting.

Considering the issues of leakages, increased coverage and other modifications, the Cabinet Committee on Economic Affairs (CCEA) agreed to launch a modified version of MDM in the form of Pradhan Mantri Poshan Shakti Nirman (PM POSHAN) scheme (Ministry of Education, 2021). Initially PM POSHAN covered approximately all 11.80 crore students in class I-VIII in government and government-aided schools but later it was decided to extend the scheme to the children enrolled in Bal Vatikas (pre-primary) of government and government-aided schools (Cabinet Committee on Economic Affairs,2021). The scheme has been conceptualised with the goal of both retention and nutrition of school children with features such as per meal nutritional norms of 450 calorie and 12 grams of protein for primary and 700 calorie and 20 grams of protein for upper primary children (Department of Education Himachal Pradesh, 2023). Nutrition norms have been supplemented by food norms comprising of 100 grams of food grains, 20 grams pulses, 50 grams vegetables, 5 grams oil and fat for primary and 150 grams food grains, 30 grams pulses, 75 grams vegetables, 7.5 grams of oil and fat for upper primary children (Department of School Education & Literacy, Ministry of Education, Government of India, 2023). Eating of varied, well-balanced meals consisting of a wide variety of food items such as whole legumes, drumsticks, millets etc to ensure different types and amounts of key nutrients and interest of children is stressed. Children, parents and members of Steering cum Monitoring Committees (SMCs) are to be included in deciding the menu under the scheme. Under Rashtriya Bal Swastha Karyakram, Ministry of Education along with Ministry of Health and Family Welfare have to conduct health checkups of children and also supply Iron and Folic Acid tablets and deworming medicine. Under the concept of 'Tithi Bhojan' people would be able to provide special food to children on special occasions or festivals promoting community participation (Department of School Education & Literacy, Ministry of Education, Government of India, 2023). The initiative would help in bringing the community and the children together. Guideline 7 of the scheme also promotes the creation and development of school nutrition gardens providing children with first-hand experience on issues of significance of nature and gardening. The produce grown in these gardens would be added to the school meal providing additional micronutrients to the children. Supplementary nutrition items would be provided to address the needs of children in aspirational districts and anaemia affected districts. To promote the ethnic cuisine of the given

area and innovative menu based on localized vegetables and other ingredients, cooking competitions will be promoted from village to national level. Use of locally grown items would also provide a boost to the local economy. The participation of Women Self Help groups (SHGs) and Farmer Producer Organizations (FPOs) would be encouraged in the ground level implementation of the scheme.

Considering the persistent complaints of under-performance and leakages in entitlement distribution schemes, guideline 14 and 15 of PM POSHAN mandate monitoring and evaluation. The scheme has mandated social audit for each school to analyse the implementation of the scheme. Social audit helps in understanding the impact of welfare policies on the public (Department of School Education & Literacy, Ministry of Education, Government of India, 2023). While financial audit looks into the issue of proper utilization of financial resources, the social audit helps in presenting the holistic situation of the implementation of the scheme with the active involvement of primary stakeholders(in case of PM POSHAN the children & parents). The exercise promotes transparency and accountability by providing beneficiaries a platform to convey their needs and grievances as well as promoting participation and capacity building. Under PM POSHAN the objectives of social audit are manifold such as verifying the entitlement being provided in a timely and equitable manner in the school to the children, ensuring that there is no discrimination with the children under the scheme etc. Together the exercise helps in bridging the gap between the expected outcomes and real outcomes of the scheme on the ground level.

While PM POSHAN is a quintessential scheme in the government's fight against hunger and malnutrition in India, the truth is that the fight against child hunger and malnutrition will bear no fruit if hunger cannot be eradicated in total. For example the PM POSHAN may provide a nutritious meal to a girl student till class VIII but this will not help her in avoiding anaemia and being underweight during pregnancies i.e. the factors which are responsible for majority of maternal and neonatal deaths during childbirth (Ministry of Health and Family Welfare Government of India, 2013). Such underweight mothers will again give birth to underweight children perpetuating the cycle of poverty and hunger. To break this cycle for women and children, a series of interconnected programs are needed which would ensure nutrition and care at all stages of life contributing to a holistic eradication of hunger and malnutrition.

Whether it be Targeted Public Distribution Scheme in operation since 1997, mid day meal Scheme in operation since 1995, National Food Security Act in operation since 2013, the emphasis of all these schemes have been to make the entitlement available. The NFSA went a step further and made rationing a legal right. However the problem of hunger and starvation has not abated. In fact India has continued to fare poorly in the Global Hunger Index and The State of Food Security and Nutrition in the World 2023 (SOFI, 2023) report by Food and Agriculture Organization. The government of India dismissed the global hunger index as a 'flawed measure of Hunger' which did not reflect India's true position (Global Hunger Index, 2023). The report indicated 18.7 % of children in India are affected by child wasting, however government figures reported it to be lower than 7.2 % month to month based on the data of 7.24 crore children available on POSHAN tracker platform (Global Hunger Index, 2023). The government also dismissed the SOFI 2023 report which pegged proportion of undernourished population in India at 16.6% based on the Food Insecurity Experience Scale. The Government of India responded by calling the methodology of the survey into question by citing that the sample was based on the survey of 3000 respondents which was inadequate for a large country like India (Global Hunger Index,2023).

While there might be disagreement over the data and conclusion of the various global reports that India has slid in its commitment to fulfil food security for its citizen. There exists certain degree of congruence between the findings of these reports and the findings of the government. In fact when the POSHAN Abhiyaan was launched in 2018, the aim with regards to children was to achieve improvement in nutritional status of children in 0-6 years and to reduce stunting and wasting (POSHAN, 2023). Even by the government's own admission, 7.2 % of 7.24 crore children numbering more than 50 lakh are suffering from wasting as per data available on POSHAN tracker. The figure may be significantly higher if children on streets and vagabond children who are likely not recorded in the tracker are included in this figure. Such figures reinforce global hunger index finding of India having the highest child wasting rate in the world. Similarly the under-five mortality rate per 1000 live births in India is 41.5 based on National Family Health Survey 5 data (Health an Integral Component of Social Welfare, 2023) which is significantly higher than Sustainable Development Goals (SDGs) target of 25 per 100 live births (Raina, 2023). Since independence India has achieved gradual successes in

its fight against hunger and malnutrition yet there exist many areas of focus and improvement. In such a scenario summary dismissal of such reports by the government will only be counter-productive. Instead, the government should look to specific areas for careful interventions, decreasing India's Infant Mortality Rate, Maternal Mortality Rate, Child Malnutrition Rate and finally helping in achieving its SDGs.

The government is aware of deficiencies in the implementation of different nutrition related schemes. Time and again they have tried various measures to address the shortcomings at ground level. For example the government has extensively used IT (information technology) resources to augment various schemes of nutrition support. Data is entered online in PM POSHAN. Its reporting and Management System is automated, Reporting & Management System wherein various details about number of schools, meals being served etc can be accessed (Department of Elementary Education Government of Himachal Pradesh, 2024). Specifically, web-enabled PM POSHAN-Management Information System (MIS) and Automated Monitoring System have been launched for effective online and real time monitoring of the scheme. The data of schools is entered into MIS by 15th of succeeding month. The uploaded data can then be analysed for effective monitoring of the implementation of the scheme and check for instances of mismanagement and corruption. Prolonged analysis of data on yearly basis can help to identify bottom performing states which can then be helped with technology making for a much more effective intervention.

Technological adaptation in food security and nutritional intervention programs has witnessed significant upgradation in recent times. From mundane data entry and accounts keeping, to artificial intelligence, technology has grown by leaps and bounds. Machine Learning (ML) combined with Artificial Intelligence (AI) can help identify the factors such as irregular allocation of foodgrains, untimely delivery, lack of departmental oversight, erring officials etc which are responsible for underperformance of the scheme. Additionally gender, age-group, menu of meals being served etc can be juxtaposed with data such as height, weight, arm & head circumference to identify the correct combination of food to cure stunting, wasting and anemia in a particular area. Recently the World Food Programme has come up with an artificial intelligence

powered first global school menu creation platform (World Food Programme, 2024). The platform is free and internet based and can be accessed all over the globe for meal optimization leading to more nutritious, affordable and localized meals. The software is especially helpful for school feeding programs that run on tight budget and have limited menu options. Such platforms should also be integrated into the PM POSHAN so as to plan the menu and suggest suitable supplementary nutritional measures keeping in consideration, availability, budgetary constraints and dietary habits.

To make sure that ML+ AI combination can work, proper data collection is quintessential. Teachers should be trained to spot children with symptoms of wasting and stunting. They should also be tasked with collecting vital details such as height and weight of children, circumference of their head, circumference of their upper arm. These monthly data collected by the schools regarding students can be recorded in an online portal which would be connected with artificial intelligence. Earlier this data was being collected and analysed by conducting physical checks on children, however many teachers/field workers are not properly equipped or were ignorant about the correct procedure leading to collection of flawed data. Additionally measurements are taken on paper, then entries are made in log book which are finally entered into an excel file. This was quite a lengthy and time consuming process with probabilities of error at every stage. This is where the use of artificial intelligence comes into picture. With the help of an AI powered app and camera and infrared sensors equipped smartphone, a student's weight ratio, body volume, height and head circumference can be instantaneously recorded and analysed. Right now it is the private sector which has taken the initiative to develop such tools (Microsoft, n.d.). So the government should either collaborate with the private sector or should develop these technologies on its own.

The artificial intelligence would in a transparent and convenient manner, detect malnutrition indicate the vulnerable child and suggest appropriate remedial measures. As malnutrition is timely detected, it would become much easier to address. The second step in the process would be to deploy machine learning i.e. intersecting statistical learning with artificial intelligence to uncover patterns and relationships regarding malnutrition (Bitew et al., 2021). For example in a study in Bangladesh involving prediction of malnutrition in women by application of machine learning based algorithm- age, region, wealth index, respondent's

education, currently breastfeeding, marital status, toilet facility were identified as potential risk factors for detection and prediction of malnutrition prone women (Islam et al., 2022). The model suggested by researchers employing machine learning was able to identify vulnerable women in less time and low cost. As vulnerable patients are quickly diagnosed, timely interventions can be made. As has been reiterated earlier that whereas earlier schemes such as MDM were focused on feeding the children, contemporary schemes such as PM POSHAN are focused on eradicating the lagging behind areas of child stunting, wasting and anaemia. Thus machine learning will help in identifying the patterns of specific issues such as anemia in women and children by identifying risk factors such as age, caloric intake, intake of iron & folic acid etc. Making it much easier to treat through advance prediction & screening of vulnerable sections. It is for this reason that time has come to embrace this technology in the PM POSHAN.

To be sure that the technology adaptation is uniform in the country and to streamline the process of data collection & analysis, Anganwadis, Balwatikas & schools will have to be made centre of the activity. Using them as a focal point to resolve the issues of child stunting, wasting, undernutrition and anemia has many advantages. First it will be economical and save cost by utilizing the existing infrastructure. Incidentally one of the major focus areas of POSHAN abhiyan was to leverage technology for the purpose of monitoring and improved service delivery for all the beneficiaries such as children of age group 0-6 years, pregnant and lactating mothers etc (New Poshan traker App, 2021). For this purpose the Ministry of Women and Child Development, Government of India has created an app called POSHAN Tracker App. The app has various means of data collection and ensures authenticity by AADHAR seeding and Local Government Directory mapping (LGD). Second educated and skilled teachers are present in schools who can be trained to use the app and record the data. Teachers have been collecting different data in the past and are knowledgeable. Any lack of expertise can be countered through extensive training programs. Thirdly and most importantly, since the program will be run from school there would be strict standards of data privacy. The data of students is sensitive and it must be handled in the manner prescribed by the government under the Digital Personal Data Protection (DPDP) Act 2023. As the entire process is being done in the government schools, it is easier to fix accountability and observe standards. Fourth government is already asking for uploading photographs of children on its

POSHAN tracker app (Complete Guide Poshan Tracker, n.d.). Daily photographs ensure that Anganwadi centre is open and functional. There have already been extensive guidelines from the technical details to the frequency of uploading of photographs to cost of mobile phones and data plans etc. The only additional action required will be to link the app to an AI software, which can scan the photos for potential hunger and malnutrition issues. The AI software will also ensure that old and repeated photographs are not used for any corruption in the system. Fifth, since every school is LGD mapped, it is easy to identify Anganwadi to a particular village and urban local body. If the instances of malnutrition are severe, immediately the government can contact the local self-government and health care centres to intervene by organizing quick and efficient medical and nutritional help. Through LGD mapping, the government has the precise idea of which local body to approach, cutting the time in identification and affixing of responsibility of a school/Anganwadi with a particular panchayat.

Conclusion

The MDM was introduced in 1995 and it was in operation for more than 25 years. Since inception it tackled the problem of classroom hunger in India. It put in place the mechanism of cooked meals for the children and associated infrastructure. It also played a huge role in convincing parents to send their kids to school. Ideally PM POSHAN was supposed be the torchbearer of the mission which MDM started. As National Family Health Survey 5 underlines, the requirement now is not only to deal with childhood hunger but also high priority areas of deficiency such as child wasting, child stunting, anaemia etc. Thus only supplying ration will not be enough, rather the need of the hour is to have targeted interventions to solve the above mentioned issues.

Food and nutritional security for children would mean that nation is finally able to break the perpetual cycle of poverty, break the monopoly of dominant section and castes over human development, and create a level playing field for all sections of society i.e. ensuring social and economic justice for all. Overtime in society, socially or economically affluent sections can have excess resources while certain sections may even not have enough resources to ensure a dignified survival. The job of the state is to distribute some of the excesses into the deprived sections of the society so that the gap between haves and have-nots can be decreased. Investing in food and nutritional security is one way for the

state to distribute resources in the society. That is why distribution of ration is an exercise of social justice as 'the duty of bringing about just distribution is thought to be a social obligation'. It was in this light that in case of Swaraj Abhiyan vs Union of India (Swaraj Abhiyan v Union of India, 2015), the Supreme Court heralded National Food Security Act as a social justice legislation.

Further measures are to be devised to include parents & children in the implementation of these schemes to ensure mass participation in these social & economic justice initiatives. The National Informatics Centre has developed an app which allows for effective monitoring of daily & monthly data of MDM uploaded by schools. However the app can only be used by MDM in-charge/ teachers and higher authorities at block, district & state level. A similar app should be developed for the parents where they can give feedback about PM POSHAN and report any discrepancy in the school meals in their area. Additionally the contact details of the local grievance redressal team should be available so that they can be promptly contacted. The copy of social audit should also be made available on the app and in the local panchayat office or urban local body office for easier access by stakeholders. The app should also allow any interested person to propose the scheduling of Tithi Bhojan, which if scheduled would be notified beforehand to the students of that area.

For a resource constrained country like India, use of AI and ML (in accordance with DPDP Act) in reinforcing child nutrition brings multiple benefits like precise identification and targeting of children, vulnerability mapping of communities and prevention of malnutrition. While AI + ML is being used in other sectors such as renewable energy or transport, it is concerning that PM POSHAN guidelines have failed to incorporate and operationalize them. Gone are the days when the responsibility of the state ended by supplying one meal a day, if the fight against child malnutrition is to be won, the state must take steps for adequate budgetary allocation, accurate implementation and periodic monitoring backed by analysis of data at every stage. If these measures are taken, time is not far when PM POSHAN will fulfil many of its objectives assisting a great deal in solving the two pressing problems for the majority of children in India i.e. hunger and education. Otherwise the danger is that PM POSHAN will join the long list of governmental programmes which failed to achieve their objectives ultimately stalling India's quest to achieve the Sustainable Development Goals and ensuring a dark future for millions of children in India.

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FAMILY TIES, BROKEN PATHS: UNDERSTANDING THE ROOTS OF JUVENILE DELINQUENCY

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Abstract

Juvenile delinquency represents a significant social problem, with family being a key factor contributing to it. This research primarily investigates how familial elements affect the offenses committed by adolescents. Reformation of juvenile delinquency is very much impacted by the family dynamics that are thought of inclusive of variables of antisocial behaviours. This research analyses the interaction between family structure, child's behaviour and their relationship with parents. It looks at various types of family units, such as single-parent households and blended families, to analyse their impact on child development and rates of teenage delinquency. It looks closely at whether and how attachment styles, parental supervision, and communication patterns predict adolescent behaviours. This study goes further to examine the serious risk factors within the family environment such as domestic violence, parental substance abuse, or criminal involvement. By contrary, it emphasizes protective factors such as good parental monitoring, strong family cohesion, and emotional access to reduction to these high probabilities of the delinquency aspect in the juveniles. Finally, the research will suggest ways of intervening such as that of family-based therapies or multi-systemic approaches to combat the causes behind the family origins of juvenile delinquency. Such development would then facilitate the designing of efficient prevention and intervention measures that could be applied in the plight of the vulnerable youth, producing positive outcomes.

Keywords: juvenile delinquency, family structure, parental influence, risk and protective factors.

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Introduction: The Family's Role in Juvenile Delinquency

Youth development and behaviour significantly impact society's future. When adolescents engage in criminal activities, it creates serious legal and social challenges that require systematic intervention. Despite established juvenile justice systems and rehabilitation programs designed to address youth offending, understanding the root causes of delinquent behaviour remains crucial for developing effective prevention strategies. One of the key influences on adolescent development is their environment, with family playing a particularly significant role.

The issue of juvenile delinquency is deeply influenced by family dynamics, including structure, parental involvement, and socioeconomic conditions. Dysfunctional family environments, lack of parental supervision, exposure to domestic violence, and substance abuse significantly increase the likelihood of delinquent behavior among youth. Despite various legal and social interventions, addressing juvenile delinquency remains a critical challenge that requires an in-depth understanding of family-related risk and protective factors. This research seeks to answer the question: how children's families influence their psychology and lead them toward delinquent behavior. We will comprehend juvenile delinquency, subsequently exploring the different family factors that impact the child. The study aims to analyze the role of family composition, parenting styles, and socioeconomic status in shaping adolescent behavior, explore the impact of adverse family conditions such as domestic violence and parental incarceration, and identify protective family factors that can mitigate delinquency. Additionally, it seeks to propose effective family-based interventions, legal reforms, and community support mechanisms to prevent and address juvenile delinquency. By examining these aspects, the research intends to contribute to the development of more effective and sustainable strategies for reducing youth crime through family-centered approaches.

Understanding Juvenile Delinquency: Definitions, Typologies, and Trends

Juvenile Delinquency refers to the habitual involvement in criminal behavior by individuals who are under the legal age of adulthood, meaning individuals who are below 18 years old. It is the behavior which is antisocial and contrary to the norm in society. It is a deviant behavior that may involve

actions contrary to the law. Delinquency is often mistaken with crime, which refers to all crimes committed during a specified time and place in a community. Using these terms interchangeably, we feel that a child who is delinquent is likely to become a criminal. This attitude makes any attempt at prevention and change seem pointless and meaningless. Juvenile delinquency is a significant social and psychological problem that impacts individuals, families, and communities. This issue reflects a complex interplay of environmental factors linked to family and individual situations that result in dangerous and criminal behavior among youth. Understanding these factors is crucial to deal with misbehavior and establishing effective programs.

Howard Becker, an outstanding American sociologist, identified four distinctive types of delinquency. Each has its own particular cause for the act of defiance. Personal delinquency views internal psychological factors as the root cause. Hence, based on this aspect, several problematic family dynamics result in individual delinquency. These encompass parental rejection, harsh or inconsistent discipline, emotional neglect, and exposure to or witnessing domestic violence. The common underlying causes for individual delinquency occur in forms of emotional and psychological distortions-a low self-esteem, nervousness, and aggressiveness-all of which take on delinquent forms. The significance of social learning and peer influence is emphasized in group-assisted delinquency. The more people interact with delinquent peers, the higher the probability that they will engage in delinquent activities. Criminal values, norms, and methods learned through interaction and observation of the other's conduct. This method, commonly referred to as "differential association," was introduced by Edwin Sutherland. This means that delinquent behavior is acquired in a social environment where it is encouraged through peer recognition and social incentives. Thirdly, organized delinquency refers to groups that are formally organized and have their own distinct subcultures. The rules, organization, and norms in these groups often encourage and enhance deviant behavior. Examples of these groups include gangs, which may be involved in drug trafficking, extortion, and violence. In these groups, membership will give an individual the sense of belonging, higher status, and security while encouraging and even endorsing such illegal activities. At last, situational delinquency identifies that it is just the immediate situation elements that arouse delinquent behaviors. This view further depicts the nature

that delinquency is not basically a fixed or predestined action but emanates from the spontaneous choices arising in specific situations. Factors include the availability of opportunities for illegal activities, having deviant companions, and perceiving the threats and rewards that accompany engaging in illegal acts. Becker's typology of delinquency provides an important framework for understanding the complex and multifaceted nature of deviant behavior. We can then make better sense of the etiology, and how it can be better combated through more valid prevention and intervention strategies, if we understand this interplay of personal, social, and situational factors. This approach emphasizes the need for multi-faceted interventions to address individual needs, strengthen social bonds, and create safer and more supportive environments for young people.

While juvenile arrest rates have shown a general decline over the past 20 years, reports indicate concerning patterns of violent youth crime worldwide. In the United States, juvenile offenders represented 16% of approximately 86,000 annual youth arrests in 2009. The World Health Organization's (WHO) 2015 report highlighted that among individuals aged 10-29 years, nearly 200,000 homicides occurred annually, with young people being both victims and perpetrators - specifically, the majority of perpetrators were young males operating in groups against victims of similar age demographics. (Gogineni et al., 2023).

Regional patterns show distinct variations:

- Eastern and Western Europe experienced peak juvenile crime rates between the late 1990s and early 2000s
- African, Asian, and Latin American regions saw increases in non-violent juvenile offenses, correlating with industrialization
- Developed nations reported significant increases in overall delinquency cases, with documented cases rising from 18,000,000 in 1992 to 250,000,000 in 2007.

Family Structure and Composition: The Foundation of Socialization

Parents and other family members are the most common agents of primary socialization. This means that during the early stages of life where

infants or babies learn about social norms, customs, etc., the influence of parents and other family members become a major factor in it. If a baby grows up struggling with the family with destructive mindsets, then that becomes the foundation of the delinquent behavior. Delinquent behaviors are generally defined as those which violate societal norms, values and laws. (Isen et al., 2021) In this segment of the paper we would discuss how different perspectives affect juvenile delinquency in terms of family dynamics.

Socio-Economic Status of the Family

The correlation between socioeconomic status (SES) - a multidimensional construct encompassing family income, parental occupation, educational attainment, and overall family welfare - and juvenile delinquency has been extensively documented in criminological literature. The strain theory by Merton (1940) states that engagement in delinquent behaviors among the youth may be motivated by poverty. It is based on the idea that delinquency results when individuals are unable to achieve their goals through legitimate channels. (Agnew, Robert. 1985) When adolescents do not have legal means to fulfill their demands, such as getting enough to eat or drink for their survival, they may rely on criminal activities to fulfill their desires. Additionally, rational choice theory (from the 18th century) posits that a youth would choose to commit a crime if they felt that the benefits would outweigh the costs. (Thompson, 2016) This theory assumes that people make rational decisions to maximize their self-interest. Future prospects and quality of life are few examples of this.

In the Indian context, the intersection of social stratification systems, notably the caste hierarchy and gender-based discrimination, creates additional barriers for children from marginalized communities and single-parent households headed by mothers. These structural inequalities often exacerbate the challenges faced by socioeconomically disadvantaged youth.

In general, many studies have suggested that youths that come from an economically weaker section of the society seem to be more prone to show delinquent behavior. After studying 256 students from Pittsburgh primary schools over a long time, young people with low socioeconomic status are ten times more likely to commit serious crimes in dangerous areas. Also, they are five and a half times more likely to behave moderately and four times more likely to commit minor offenses. (Sun & Wang, 2023) To conclude with, socio-

economic status of the family influences the chances of teenagers committing a crime.

Family Structures

The structure of the family can deeply affect the mindset of the teenager. Any dysfunctional or broken family would be reflected by the behaviors of the child. Any circumstances which interfere with the performance of the general functions like the division of labour such as the husband to be the provider, and the wife to be the home-maker, create problems which threaten the survival of the family as a unit; when the threats become actualities, it becomes a broken family. (Spiegelman, Mortimer. 1936) A traditional complete family including a father and a mother would have children with lesser crime rate.

On the contrary, a child with a single parent has a less time to spend with that parent; the stress involved in raising a child alone reduces support a single parent can provide. For this reason, children in single-parent families spend most of the time unsupervised, with a high tendency toward increased delinquency. (Demuth & Brown, 2004) Similarly, the stress of family disruptions for youths with stepparents may result in greater delinquency. (Kirby, 2006) Residing in a stable, two-parent family may thus prevent youths from ever becoming delinquent.

The relation between family dynamics and juvenile delinquency is multifaceted and important. Upon analyzing this analysis, we see how both socioeconomic status and family structure influence adolescent behavior. Socioeconomic pressures on families, especially in the context of India's social structure, can lead to strains that may push youth toward delinquent behavior. This is supported by both Merton's strain theory and empirical evidence showing significantly higher delinquency rates among economically disadvantaged youth.

Similarly, family structure becomes an important factor, where the traditional two-parent household usually tends to provide a more stable and supervising environment than that found in single-parent or disrupted families. These effects of family structures are not merely theoretical; various studies have actually documented relationships between family structure and delinquent behavior.

The relationship, hence, forms an essential element that can help devise successful intervention measures and support programs. This essentially calls for measures against juvenile delinquency in more family-oriented policies than direct actions targeting the youths alone but incorporating support through economics as well as ensuring stable family setups. Insights gained in relation to the understanding of the families' behavior may well help frame policies and interventions toward the future with regards to the prevention of juvenile delinquency.

Parent-Child Relationships: Four Key Paradigms

The relation of the parents and their children has a very significant impact on the psychology of the child. This was further delved into a meta-analysis by Loeber and Stouthamer-Loeber. (Loeber & Stouthamer-Loeber, 1986) It offered an in-depth look at how family dynamics relate to juvenile delinquency, extending past basic correlations to investigate predictive capabilities and the interaction of different family elements. Let's investigate further into each paradigm:

Neglect Paradigm

It includes not only absence but emotional absence, coldness, and neglectful involvement. The strength of the relationship being so crucial makes parental involvement highly plausible as an indicator of shaping up a child. The study points out the need for consistent supervision not only to prevent immediate infractions but also to provide guidance and support that reduce the likelihood of future delinquency. Longitudinal research has suggested that early neglect has predictive validity concerning the long-term consequences related to this type of parenting style. Official delinquency records, which are generally considered to be more valid than self-report measures, are most closely associated with neglect, thus suggesting that the results are significant.

Conflict Model

The study distinguishes between different types of conflict. Physical punishment, although intuitively a form of punishment, was only weakly associated with delinquency. In contrast, nagging and scolding were more strongly associated, suggesting that the character of discipline rather than the

fact of punishment per se are the critical factor. Parent-child rejection, a form of conflict especially damaging to relationships, was consistently the strongest predictor of delinquency and aggression. Such rejection may appear in several forms, from verbal maltreatment, emotional unavailability, and inadequate acceptance and support. Longitudinal research has indeed validated the detrimental long-term effects of parental rejection.

Deviant Behaviours and Attitudes Paradigm

This paradigm explored the intergenerational transmission of deviant behaviors. The study found a moderate correlation between criminality of the parents and that of the youths, which indicates the fact that criminal conduct is actually a behavior that is learned and transmitted in family structures. The fact that aggression may even initiate a repetitive cycle within a family points toward the significance of intergenerational transmission of attitudes and behaviors alike. It shows that the chances of children committing delinquent behaviors increase quite rapidly when parents support and promote such behaviors. Thus, this aspect underlines a deep influence of socialization and modeling through family.

Disruption Paradigm

This model helps to analyze the possible influence that may arise relating to disruptive family events. The study demonstrated that marital discord is a more significant predictor of delinquent behavior than the absence of mothers or fathers, thereby underlining the critical role of a stable and nurturing family environment, whether it is nuclear or extended. The adverse impacts of marital conflict on children's conduct have also been well-documented, suggesting that persistent discord may lead to the development of antisocial behaviors. Parental mental health problems, particularly maternal depression, were significantly related to conduct disorders in children and therefore suggest a significant impact of parental well-being on child development.

Meta-analysis powerfully indicates that the sum effect of different risk factors within the family environment greatly increases the likelihood of delinquent behavior. The availability of different family-based disadvantages—there being neglect, discord, and criminality on the part of the parents—introduces a profile of much higher risk compared to any of the factors taken

in isolation. Furthermore, the study briefly touches upon the concept that different types of delinquent behavior may be related to different family types, thus opening up scope for further research in this area. Overall, the research indicates that the issue would best be approached with proactive approaches, timely intervention, and consistent monitoring. Lastly, it is appreciated that the linkages between parental effects and particular traits of individual children constitute an essential area for future research.

Family Risk Factors: Parental Self-Control, Imprisonment, Violence, and Substance Abuse

Parental Self Control

Research has found that parental self-control affects juvenile crime rates. (Meldrum et al., 2016) Self-control refers to an individual's ability to regulate their behavior and resist impulsive or harmful actions. Those with lesser self-control tend to aggravate the kind of impulse that leads to a higher likelihood of getting involved in crime.

Recently, Meldrum and colleagues, along with a juvenile organization in the Southeast United States, conducted research highlighting a concerning trend: rising juvenile delinquency, which is also leading to increased parental irritability.. Probably, it can be supposed that the emotional control of the parents may have bred a propensity for delinquency in their juvenile. Accordingly, parents who lack good control of themselves may have some anger issues, should there not be control over a child's deviance. All this leads to chaotic punishment and abusive behavior in their children, ultimately ending at the door to the ill-modeled environment that leads to delinquent behaviors in the child. On the other hand, parental anger will wash out the parent-child relationship negatively: the relationship becomes less trusting and may result in a mutinous and angry behavior that a parent-both not-will eventually extend only possible worsening of juvenile's behaviors and higher chances of delinquency. Thus, these results reflect the complexity of parental self-control in fostering the well-being of the young child and preventing delinquency. It is reasonable to assume that enriching the emotional and conflict management skills of a parent will go a long way to foster positive relationships among parents and children.

Parental Imprisonment

Juvenile delinquency can be easily influenced by parental imprisonment. It will cause psychological harm to teenagers that will lead them to crime. Parental incarceration deeply impacts children, causing significant emotional and psychological distress. The uncertainty surrounding the parent's absence, including the unknown length of imprisonment, creates anxiety and fear. Children may worry about their parent's safety and their own future, leading to emotional and behavioral problems. (Martin, 2017) The stigma associated with parental incarceration further compounds these challenges. Children may feel ashamed or embarrassed, leading to social isolation, low self-esteem, and internalized shame. This stigma can negatively impact their self-image and future relationships. Beyond emotional distress, parental incarceration disrupts children's lives in various ways. They may face academic difficulties, struggle to maintain social connections, and engage in risky behaviors. These challenges can have long-lasting consequences, impacting their overall well-being and future opportunities (Pal, 2023).

Domestic Violence

Domestic violence increases the probability of juvenile delinquency. Children who are exposed to or are victims of domestic abuse suffer from tremendous emotional and psychological stress. Numerous children subjected to violence at home also suffer from physical abuse. Kids who observe domestic violence or experience abuse firsthand are at significant risk for lasting physical and mental health issues. A child's sense of security and safety is destroyed when they witness domestic abuse. Children feel scared, nervous, and powerless as the home—which should be a place of refuge—becomes a battlefield. They may come to view violence as a legitimate means of resolving disputes as a result of their ongoing exposure to hostility. Children who experience or witness domestic violence are also more likely to become perpetrators of violence themselves.

Parental Substance Abuse

Most parents and caretakers of substance-use may use alcohol and drugs averagely without posing more risk to their children. A different story is told for parents and caregivers inflicted with alcohol and drug dependency, where often

their lives are beset with chaos and unpredictability-to accomplish too little or none of meeting the needs of their offspring. Consequently, these children can be in danger of physical harm. Such youths don't have so many expectations for themselves in the future, and at the same time, they also have low hopes for the future. This, in turn, can push them at more risk of being involved in dealing drugs and everything associated with it.

Protective Family Factors: The Role of Parenting Styles

Various parenting approaches impact children in distinct ways. Their mental well-being is impacted in various ways, leading them to develop distinct beliefs regarding what is right and wrong. Different scholars have classified parenting styles in various ways. Two distinct classifications consist of: authoritarian, democratic, and laissez-faire (Baumrind, 1991); and authoritative, authoritarian, permissive, neglectful, or uninvolved parenting. We will utilize the four parenting types and incorporate the three parenting modules within it.

Authoritative Parenting

Authoritative parents are affectionate and supportive while also establishing explicit rules and expectations. They promote self-sufficiency while fostering a nurturing atmosphere. This approach is linked to elevated degrees of responsiveness and demand. Kids brought up by authoritative parents are often self-sufficient, socially skilled, and demonstrate superior emotional control. They frequently achieve greater success in educational environments and possess higher self-worth (Endendijk et al., 2016). This resembles parenting that is democratic. Democratic parents are those who guide their children using rational criteria, such as achieving good academic results or reducing video game time; however, they also remain adaptable to their children's needs. The democratic approach to parenting is demonstrated to be beneficial in raising children, as it addresses their needs, including both physical necessities and emotional care (Sun & Wang, 2023).

Authoritarian Parenting

The authoritarian describes those very strict parents who think that the ideal way for their children to develop is to follow their own beliefs and guidance completely. Authoritarian parents are rigid and require compliance, frequently prioritizing discipline rather than affection. They set lofty standards and implement

regulations with little room for flexibility. Communication tends to be one-sided, offering limited opportunities for children to share their views. Kids brought up by authoritarian parents might be compliant and skilled but frequently face challenges with self-esteem and social abilities. They could also show increased anxiety levels and are more susceptible to depression (Steinberg, 2001).

It's important to highlight that the authoritarian approach is debated. Certain reports indicate that an authoritarian approach in literature adversely affects adolescent behavior, whereas others suggest it produces more favorable outcomes for Asian and Indian youth (Ang & Goh, 2006).

Permissive Parenting

Permissive parenting features minimal demands and heightened responsiveness. It is defined by insufficient oversight, regulation, and discipline, but it is also affectionate and supportive (Pettit et al., 1997). Permissive parents usually demonstrate acceptance and affection for their children's wishes and behaviors, permitting them to oversee their activities with few limitations. This form of parenting occurs when parents do not establish clear limits or anticipate suitable behavior for their children's developmental stage. Consequently, permissive parenting might adversely affect children's psychosocial growth, as offspring of permissive parents could exhibit characteristics like narcissism, social irresponsibility, and self-centered motivation (Berzonsky, 2004).

Neglectful (or Uninvolved) Parenting

Neglectful parents show minimal responsiveness and demand. They are frequently disconnected from their children's experiences and might disregard their needs, resulting in insufficient emotional support and direction. Kids brought up in neglectful settings can develop feelings of insecurity and diminished self-worth. They frequently face challenges both academically and socially, and may participate in delinquent activities due to insufficient supervision and assistance (Dornbusch et al., 1987). This is akin to the laissez-faire parenting approach. Laissez-faire parents are characterized by setting minimal boundaries for their children, allowing them to follow their desires, which often results in a lack of attention to their children. Some research (Obiunu, 2018) has shown that children raised in laissez-faire environments are more likely to engage in delinquency due to inadequate parental supervision

and a lack of constructive feedback when they voice their thoughts or seek clarification.

Parenting styles are crucial in a child's development, impacting their psychological health and moral development. While various classification systems have been created, the four-type model that includes authoritative, authoritarian, permissive, and neglectful parenting offers a thorough foundation for examining these effects. Authoritative parenting is the best style of parenting as it holistically improves the child with love and affection. Children born in this household are less likely to become delinquents. Authoritarian parenting refers to the one which has strict rules and discipline is followed. This is a debated style as in some households, typically Indian and Asian it works as a positive parenting style while in others it leads to negative effects on the child. Laissez-faire leads to children not being looked upon properly. This leads to them leading their own lives without any supervision. This gives them more access to meeting people with delinquent mindset and them becoming a delinquent as well. Therefore, parenting style becomes extremely important for the children to have the right mindset and not go along the path of delinquency.

Juvenile Delinquency in India: Legal and Statistical Context

Juvenile delinquency in India has become a growing concern for society as well as for authorities. Although the government is taking steps, it remains an act of postponement. According to the law, anyone under the age of 18 is considered a juvenile. This raises concerns about the gaps in providing care and protection to juveniles, especially for those facing legal challenges within the legal framework. A larger number of juvenile offenders will go on to display those behaviors which fall under illegal as well as punishable categories. A child in need of care and protection would be a child found to be ordinarily housed in cases where he is not provided with care by the parent, lacking a caregiver altogether, subjected to neglect, put in such a position for potential abuse from where he is expected to be his caregiver, suffering from severely enhanced conditions, abandoned, or at risk from these conditions. The Juvenile Justice (Care and Protection of Children) Act, 2015 was also further changed as a response to Nirbhaya's brutal Gang Rape Incident. The amendment permits a juvenile over 16 years to be tried as an adult, but it cannot be applied afterwards. The amendment has categorized the crimes committed by a juvenile into three

specific categories: "heinous, serious, and petty offences." Persons aged 16 to 18 who are considered to have committed serious offenses are treated as adults and are tried in standard courts. In 2021, India witnessed 31,170 cases of juvenile detention. This was up by 4.7% from the previous year. It is observed that a large number of juveniles, 32,654 under the IPC and 4,790 under SLL offenses, were detained between 16 and 18 years of age (Abhishek & Balamurugan, 2024).

Intervention Strategies: Family-Based, Cognitive-Behavioral, and Multi-Systemic Approaches

Family Based Intervention

The conduct of an adolescent is largely influenced by the domestic environment of his/her parents. Dysfunctional family relationships, such as poor communication, disrespect, drug addiction among parents, and Domestic abuse largely predicts delinquency. Such research has proven that family-based therapies can be remarkably effective in both preventing and treating delinquent behavior through enhancements in family relationships, communication, and parenting techniques.

Multi systemic Therapy (MST)

MST is an intervention which focuses on addressing all factors responsible for juvenile delinquency and involves family and community-based interventions. The therapy involves working together with the teen and their family to improve communication, problem-solving, and conflict resolution skills. MST has shown the capacity to reduce recidivism, the act of continuing to commit crimes even after having been punished (Cambridge Dictionary, 2023) and strengthen family interaction by targeting family, school, and community components affecting delinquent behavior. MST has been implemented successfully across various settings, demonstrating its flexibility and effectiveness in reducing youth crime and improving family cohesion (Papakitsou, 2024).

Functional Family Therapy (FFT)

FFT is another family-based intervention that has shown promise in reducing juvenile delinquency. The model seeks to improve family interaction

through strengthening parent-child relationships and solving family conflicts. FFT has been particularly helpful for teenagers who are involved in substance abuse and crime, helping families develop positive coping mechanisms. The technique is on improving the relationship between parent and child while encouraging positive reinforcement of behavior in the family setting.

Cognitive-Behavioural Therapy

Cognitive-behavioral therapy (CBT) is prevalently used and empirically validated as treatment modality for teenagers who are delinquent. CBT is an approach to identifying and tackling unpleasant thinking and behavior patterns. Fostering schemes aimed at reducing conduct syndrome, such as impulse, irritability, and poor decision-making capabilities, are found in delinquent adolescents. The focus of this therapy is on developing disciplines for discovering and combating fallacious thoughts, of which an element refers to the construction of effective coping devices allowing the making of smarter choices. Studies have shown that CBT is effective in reducing aggression, impulsivity, and recidivism among adolescent offenders (Lochman et al., 2019). CBT will help teens understand the consequences of thought patterns "rooted" in a kind of denial concerning one's violent behavior, shoplifting, and such. The desired result involves giving them sense in their actions as per prosaically behavior. CBT is a fundamental element in the treatment of adolescent delinquency, built as it is on the uniqueness of its being customized to the specific needs and problems of individual children. In addition to individual therapy, group CBT interventions have also been implemented in juvenile justice settings. Group therapy allows adolescents to learn from one another, share experiences, and practice social skills in a supportive environment. Group CBT has been found to improve emotional regulation, reduce aggression, and strengthen interpersonal relationships, all of which contribute to decreased delinquent behavior (Seonghoon & Sungeun, 2019).

Prevention Programs

Prevention programs focus more on the prevention of delinquency by focusing on the identification of at-risk youth and their interventions before deviant behavior takes place. Commonly, such prevention programs address these basic risk factors, such as poverty, dysfunctional family, and peers, to

lessen the likelihood of future criminal activities. Primary prevention programs target the general population of youth and include efforts to prevent smoking, drug use, and teen pregnancy. Secondary prevention programs target youth at elevated risk for a particular outcome, such as delinquency or violence, a group that might include those in disadvantaged neighborhoods, those struggling in school, or those exposed to violence at home (Papakitsou, 2024).

School Based Programs

Since teenagers spend a significant part of their day in School-based dwellings, it has become an essential strategy aimed at students in educational settings for avoiding and responding to delinquent behavior. Successful educational interventions are positive learning environments, social and emotional intelligence development and early intervention for delinquent students. PBIS is the abbreviation of Positive Behavioral Intervention and Support. Positive Behavioral Intervention supports and enhances clear expectations and rewards to encourage appropriate behavior and is thus considered a preventive strategy for positive behaviors for schools. Research suggests that fewer schools implementing PBIS report expulsion, suspension, or other disciplinary outcomes, leading to a reduction of future delinquency among those suspended or expelled students. By rounding up the use of rewards as opposed to mere punishment, PBIS conditions a climate in favour of academic and social-emotional progress.

Restorative Justice

Restorative justice programs focus on the harm caused by offending behavior, allowing offenders to take responsibility and seek to restore. In schools, restorative justice practices are usually characterized by a dialogue between victims and offenders, facilitated by a trained facilitator. This helps students understand how their behavior impacts others and encourages accountability and empathy. Restorative justice has been shown to reduce suspensions, promote better relationships between students, and prevent future violence (Bergseth & Bouffard, 2012).

Community Based Programs

Community-based programs are important factors in the provision of viable alternatives to delinquent behavior. Particularly, those possibilities help

teenagers to steer clear of delinquency and the provision of family and school-based treatment. Such programs are the ones that intervene in backing up the teenagers in harmless ways and besides, get support networks beyond the immediate homes and schools. Mentorship Programs: Encourage and support at-risk young adults through links with adult mentors, and provide them with experiences in positive role modeling, such as Big Brothers Big Sisters. Indeed, according to various findings, by assisting teenagers in raising their self-esteem and boosting academic performance or by abstaining from risky behaviors, mentoring has been effective in the reduction of delinquency. These long-term connections contribute significantly in offering teenagers the safety and motivation they require in making sound decisions in life also. Adolescents may find different ways to use their time, rather than among the unfruitful side of community and personal spaces through these activities, views and activities community-based leisure and vocational activities that involve keeping youth in action. Young people involved in sports leagues, art classes, and job training programs all learn new skills that may increase their employability in the future. They are especially akin to a safe haven for kids who come from less-privileged homes, where they can learn self-discipline.

Conclusion: Addressing the Family Roots of Juvenile Delinquency

This study presents an in-depth analysis of families and delinquency as given in the paper. This makes it clear that both the society and family background highly influence the delinquent behavior of youths. Delinquency, especially among adolescents, can be caused by factors like economic status, rearing practices, family structure, and conflict resolution within that family. Though such factors are now studied much along with peer influence and societal norms, the most important remains the home environment in which the child grows and matures. Therefore, juvenile delinquency should be resolved through addressing all these primary failures, as this would be the most effective solution.

For juvenile delinquency prevention, the first child-oriented interventions should be to complement societal negative factoring effects. The strategy must empower community participation and NGO interventions to ensure effective implementation of integrated family therapeutic models such as MST and FFT, which revolve around parental supervision and parent-child communication. In

addition, families of low educational attainment must be guided on improving child-care practices and protective mechanisms, such as appropriate forms of discipline. More improvement to community-based interventions is among the cheapest ways to provide positive role models to the youth while empowering them through organized sports and structured recreational activity.

Laws in recent times have been focused on rehabilitation, a process to restore mental and/or physical abilities lost to injury or disease, in order to function in a normal or near-normal way (NCI Dictionary of Cancer Terms, n.d.) rather than punishment for young offenders. Restorative justice, legal reforms as well as the new policies could be the sorely needed critical steps in the positive direction. With so many victims of crimes, there will also always be a need to balance justice with rehabilitative action, such that no youth is left without an opportunity for positive change. Most attention should be given to policies buoyed up on rehabilitation for most offenders and root causes for many of their acts, where very strong parental and community support is required to define changes. To effectively curb juvenile delinquency, a holistic approach on multiple fronts is required. Economic and legal policies should be directed to address the root causes of delinquency while promoting a justice system that is inclusive and rehabilitative. Building family structures, raising parental education and evidence-based interventions contribute to the future perpetual behavior change. Ultimately, change in attitudes by society closely followed by long-term support by the community and family characters would be very effective for sustainable solutions in the prevention and reduction of juvenile delinquency.

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REALISING THE RIGHTS OF REFUGEE CHILDREN THROUGH THE JURISPRUDENTIAL LENS OF CHILD RIGHTS: LAW AND PRACTICE IN INDIA

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Abstract

In this paper, the author determines the positionality of refugee children in India's domestic legal framework. While India is not bound by international instruments on the rights of refugees generally, this paper argues that India remains bound by its international commitments under child-rights instruments when it comes to the rights and entitlements of refugee children. It notes that the immigration detention, forced parental separation, and incarceration, or institutionalisation of children remains a violation of international law regardless of India's non-ratification of instruments on the status and treatment of refugees. Based on the Convention on the Rights of the Child (CRC) this paper proceeds to enumerate the rights available to all children, including refugees, and their violation under India's ad hoc law and policy on 'foreigners'. It finds that there is often a complete failure in realising a range of rights under the CRC ranging from the right to non-institutionalisation, to identity, nationality, and family unity. In light of these findings, the paper proposes an approach to refugee rights through a child-friendly lens, the first step to which is primacy being given to the best interests of the child. The primary argument underlying this paper is that refugee children are to be treated as children first, and foremost, and entitled to the full range of rights and protections available to all children, and at par with all children.

Keywords: refugee child, detention, immigration status, institutionalisation, best interests.

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Introduction

India has not signed the 1951 United Nations Refugee Convention ('Refugee Convention') or the Protocol relating to the Status of Refugees, 1967, which spell out refugee rights and states' responsibilities to protect them, nor does it have its own laws protecting refugees. This absence of a well-defined refugee law results in refugees being subject to arbitrary government policies which often fail to adequately implement constitutional and judicial safeguards of refugees' rights and entitlements (Bhattacharjee, 2008). Consequently, refugees are forced to rely on an ad hoc, and case-to-case implementation of their rights.

There have been reported instances of refugee children being killed while in detention (Sharma, 2023), indefinitely detained, forcefully separated from their parents at the border, institutionalised, and denied nutrition, education, and other facilities (Refugees International, 2023; Prasad & Law, 2024). These instances draw attention to the plight of refugees, that lack legal status in India, and are often alleged to be illegal immigrants, or 'foreigners' under the law (Sur, 2023; Sharma, 2023). As of August 2022, of the around 294 refugees detained in India, at least four were little children (Rathore, 2022). Refugee children are particularly vulnerable, losing access to good health, nutrition, a stable environment, security and family life in the course of displacement (Vijayakumar, 2012).

A number of significant judgments on the rights of refugees in India, have involved refugees that were below the age of majority (*Ktaer v. UOI,* 1999; *U Myat v. State,* 1991). However, they make no mention of the Convention on the Rights of the Child (United Nations, 1989) despite India being a party to the CRC. The CRC, under Article 22, imposes specific obligations on governments to protect the rights of refugee children. Therefore, there is an urgent need to examine the status of refugee children and the scope of their rights under Indian law.

This paper attempts to answer the following questions. *First*, is the practice of grounding refugee children's claims on the same protections and rights as refugee adults under the present structure, in contravention to children's rights and India's international obligations? *Second*, what ought to be the status and scope of protection afforded to a refugee child under the Indian law to bring it in line with international best practice?

Within the broader category of 'children on the move', this project focusses on refugee children to account for their vulnerability caused by the absence of formal legal status. The scope of rights examined is limited to the attainment of refugee status, right against detention of the parents or the child, and participation rights of the child. This limitation aims to focus on the specific rights being denied to refugee children, and may in turn support the refugee child's claims to health, nutrition, education and other entitlements common to children in general.

This paper examines how the practice of grounding refugee children's claims on the same protections and rights as refugee adults renders invisible the particular vulnerability of refugee children. Further, by not acknowledging the peculiarities that may arise when considering the ascertainment of refugee status for children this approach may deny children the full protection of their rights. Finally, this approach does not account for the scope of rights specific to children irrespective of recognition or non-recognition as refugees, as well as the rights that may accrue particularly to refugee children. Therefore, this paper seeks to propose an approach to the rights and entitlements of refugee children grounded on the CRC, and the theory and practice of child rights jurisprudence.

Part II discusses the normative framework against which refugee children's rights and attainments are evaluated in the present paper. It highlights the applicability of the CRC, as well as the significance of its conceptualisation of the rights of particularly vulnerable children. This provides a foundation on which to ground the analysis of the issues at hand.

In Part III the different doctrines relevant to the rights of refugees are laid down and placed in the context of children's rights, specifically those under the CRC. The attainment of refugee status for children is understood through this lens. Situating the refugee child in the law is significant as it accounts for the distinct realities of the child from the adult which is discussed within this Part. The law and practice in India is measured against international practice which provides useful guidance to the full realisation of the promise of the CRC.

Part IV discusses India's treatment of child refugees, to ascertain the scope of these rights once refugee status is attained. This is evaluated against the framework of the child rights discourse. Therefore, it ascertains

the applicability of the Juvenile Justice Act, 2015 ('JJ Act 2015') to refugee children, in order to protect them from exposure to the adult criminal justice system following immigration related detention, and the desirability of such application, determining the urgent need for change in India's treatment of child refugees. Part V concludes the discussion.

Research Methodology

The method of study is doctrinal and analytical. This uses domestic case laws and statutes as primary sources to evaluate the domestic legal framework. The CRC and other relevant international treatises are also analysed to determine the scope of India's international obligations. Owing to the contemporariness of various discussions in light of the Rohingya refugee crisis, a number of news reports, and opinion pieces are relied on to highlight the plight of refugee children, and the persistence of the legal uncertainty surrounding their entitlements. Additionally, secondary sources such as General Comments, UNHRC reports, commentaries, guidebooks, and online sources provide useful insights answer the research questions. This paper shall adhere to all ethical guidelines.

Research Limitations

This paper is based on qualitative data owing to the inadequacy or inaccuracies in quantitative data on account of discrepancies on legal status, and record-keeping of stateless populations. It provides an in-depth analysis of refugee children within the Indian legal framework and make jurisdiction specific recommendations; accordingly, the research is geographically limited.

The Normative Framework for Children's Rights

To determine the attainment of the entitlements of children, it is first necessary to identify a normative standard against which such attainment can be measures. This part discusses *first*, the applicability of the CRC as a source of rights, and *second*, the specific entitlements of the CRC applicable to refugee children.

Enforceability of The CRC in India's Dualist System

India ratified the CRC in 1992, and through such ratification it is under an obligation "to review National and State legislation and bring it in line with provisions of the Convention" (Roy & Butterflies, 2015). In its Third and Fourt

Combined Periodic Report on its implementation of the CRC, India noted that its approach to the furtherance of children's rights draws from the Constitution of India, domestic legislation, policies and programmes and demonstrates its continuous commitment to children, and the cause of strengthening the framework for the realisation of children's rights (Committee on the Rights of the Child, 2011).

Article 51 of the Constitution of India obligates the State to foster respect for treaty obligations through a non-binding directive to the government. However, the Supreme Court (SC) has frequently used international law to domestic proceedings in order to enhance the ambit of constitutional guarantees in a manner that aligns with international conventions (Vishakha v. State, 1997; NCPCR v. Rajesh Kumar, 2020, 2).

Despite a formal dualist system, courts in India frequently apply international law regardless of the extent of legislative enactments, and provide them substantive importance (Chandra, 2017, Part 4.2). Further, it has also acknowledged the obligation upon India, as a responsible member of the international community to adopt such an interpretation of law that is in line with its international commitments, particularly when not in conflict with statutory mandates (Justice K.S. Puttaswamy v. UOI, 2017, 29, 61, 131-33).

Finally, the near universal ratification of the CRC (see *Frequently Asked Questions on the Convention on the Rights of the Child*, n.d.), grants it considerable authority as the source of the internationally agreed-upon standard for the minimum set of rights of children which are obligatory upon all governments. Therefore, the CRC provides a powerful tool to evaluate the extent of protection of the rights of refugee children in India and avenues for reform.

Additionally, the Juvenile Justice Act, 2000 and the JJ Act, 2015 were enacted to give effect to and keeping in mind the standards prescribed under the CRC, and demonstrate the strong legislative intention towards its domestic implementation. Both the CRC and the JJ Act make codify the principle of non-discrimination and make no distinction between children based on their citizenship. Therefore, the CRC and the Act apply to all children, whether citizens of India, or not.

The Scope of Rights Relevant to Refugee Children

Four overarching general principles, which were enumerated by the CRC Committee, govern the application of the CRC (UN. Committee on the Rights of the Child (1st sess. : 1991 : Geneva), 1991, 13; UN. Committee on the Rights of the Child, 2003, p. 12; Lundy & Byrne, 2017). These principles, are the right to non-discrimination (CRC, article 2), the best interests of the child as a primary consideration (CRC, article 3, sub-clause 1), the right to life, survival, and development (CRC, article 6), and the right to be heard (CRC, article 12). These principles are to be read with each other and with other rights.

A significant contribution of the CRC, that is absent in other human rights instruments is the combination of autonomy with vulnerability (Ryngaert & Vandenhole, 2017, p. 212). For example, while protection, best interest, survival and development rights, may characterise a child as dependent demonstrate a welfarist approach, when read with participation rights, the child is imbibed with agency and a right to be heard in all decisions that affect them. This attains particular significance in India, where countless reports on child refugees discuss their immense vulnerability in the face of circumstances (Sur, 2023) without problematising their lack of participation in decisions regarding their status and rights.

Additionally, the CRC views vulnerability in its particular context, and in a manner which provides for the heterogeneity of vulnerable children. Consequently, under Article 22, CRC specific obligations are imposed on states to secure the rights of refugee children, and those seeking refugee status (UN. Committee on the Rights of the Child, 2013, 54). Further, in light of the frequent detention of children along with their families, the right against arbitrary deprivation of liberty, and detention as a last resort must be examined. Finally, CRC rights to identity, nationality (articles 7 and 8), and family unity (article 9) gain particular significance in the case of refugee children. The next section discusses the application of these rights to India's laws on refugees, and refugee children in particular.

The Attainment of Refugee Status by Children

In India, in the absence of a formal legal framework on refugees, they are regulated by the Foreigners Act, 1946, the Passports (Entry into India) Act, 1920, and the Registration of Foreigners Act, 1939. Therefore, refugees enjoy

no distinct status and may be prosecuted as 'foreigners' under the Foreigners Act for illegal entry into India. This puts them at risk of detention or deportation but there has been a limited expansion of rights of refugees under various policies and judicial decisions.

The rights of refugees under Indian law include a right to determination of their refugee status, the adherence to due process while this status determination occurs, and a right against non-refoulment (Bhattacharjee, 2008). Certain exemptions for refugees include the issuance of Long-Term Visas, which has formally connected with 'refugees'. Further, refugees in India, particularly Rohingya refugees are entitled to registration by the UNHCR, although the scope of protection on account of such status is still left to the discretion of the government (The Hindu Bureau, 2023).

The determination of refugee status is significant for the enjoyment of rights and entitlements under the Refugee Convention, and all other human rights treaties that include protections for refugees (United Nations, 1951, article 1), which have found indirect incorporation into the Indian legal framework. Further, the rights of refugees under the CRC are more expansive and encompass both refugees and those seeking refugee status (CRC, article 6).

The internationally accepted definition of a refugee is found in Article 1 of the Refugee Convention which defines a refugee as a person forced to flee their country owing to war, persecution or violence, and is unable to return owing to a "well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group" (United Nations, 1951, article 1).

Further, the CRC Committee has noted that this definition must be interpreted in a manner that is age and gender sensitive accounting for particular manifestations of persecution experienced by children, including child labour, sexual exploitation and trafficking, and female genital mutilation (UN. Committee on the Rights of the Child (UNHCR - The UN Refugee Agency, n.d., 74). For this assessment, it is integral that the child's voice be heard.

In India, the determination of refugee status has failed to account for the refugee child. On one hand, when children are accompanied by adults, their claims are often subsumed within the primary claims of a family member.

Protection status if granted, is subsidiary to the status of this member. On the other hand, particularly in the case of older refugee children, there is a tendency to completely disregard the age of a child for refugee status determination.

In the former case, the refugee child goes completely unheard, with the added risk of the expiry of their refugee status on attaining majority. In the latter case, the specific vulnerability of the child remains unacknowledged even while according a higher degree of autonomy to the said child. The harm is that it fails to account for both the age-specific determinants for refugee status, which could include, persecution even by denial of human rights under the CRC; and, it fails to provide for specific entitlements of the refugee child, such as to family unification or education.

In the landmark case of *Ktaer Abbas Habib Al Qutaifi* v. *Union of India*, the plaintiffs who were 16, and 17 years old, had been separated from their parents, and fled to India to avoid compulsory military service in Iraq. The court stayed the detention in the said case, but left the determination of status to the UNHCR. Significantly, a strong case could've been made that forced recruitment for the armed forces would constitute an age-specific ground for persecution. However, the court failed to undertake any nuanced analysis based on the principles and rights within the CRC.

Significantly the court referred to the case of *Minister of Immigration and Ethnic Affairs* v. *Teoh* ('*Teoh*'), to argue for the enforceability of international obligations. In the said case, the Australian court had interpreted the phrase "in all actions concerning children" (CRC, article 3, clause 1) very widely to encompass any actions that were to any degree touching, relating to or having any bearing on children. Arguably, the most significant contribution of this case was this wide interpretation, expanding the application of the 'best interests' principle to support the application of the 'best interests' principle to the refugee status application of the parent. Yet, the SC, even in its reference to *Teoh*, ignored this application of 'best interests' in a wider sense.

This interpretation is supported by Canadian jurisprudence which is significant as it has seen the most development in the sphere of the application of the 'best interests' principle to deportation issues affecting children. In *Baker* v. *Canada* (1999), the court noted that the principles of the CRC did not allow the needs and interests of children to be minimised in decisions affecting their

future, which would include the immigration status of their parent, in this case their mother (*Baker v. Canada,* 1999, paras. 71-75). The procedural aspects of such consideration of children's best interest would involve notice being given to the children as well as the other parent, a right for children to make submissions in this regard, and a right for them to have counsel present (*Baker*, para. 18).

There are multiple reports of refugee children not being informed of the refugee status or detention of their parents, let alone being accorded any say in the proceedings for the same (Naik, M. & Firdous, M., 2023; Paliath, S. 2022). In the absence of any enactments on these procedural safeguards for the rights of children under the principles of their best interest and right to be heard, and their right to family unity, these rights are not being realised in India's treatment of its refugees.

Therefore, under the present framework, the child's absence under refugee laws sees the failure of both substantive and procedural realisation of the principles and rights under the CRC. This is aggravated by the spillover onto other aspects of children's rights once refugee status is left under question, which is discussed in the following section.

Locating the Refugee Child in Indian Practice

Children are conspicuous by their absence in the Indian discussion on the rights of refugees. However, considering that children, regardless of status, are entitled to certain rights, the extent of the realisation of these rights needs to be evaluated.

First, under Article 9 and 10 of the CRC the rights of family unity, and reunification is codified. *Second*, under both the CRC and the JJ Act 2015 the detention of a child, and the institutionalisation of the child are measures of last resort (CRC, article 37(b); Government of India, 2016, §3(vii)). In the case of the refugee child, these present an inherent dichotomy.

In *Mohammad Salimullah* v. *Union of India*, the SC allowed the deportation of certain members of the Rohingya community to Myanmar in clear violation of the principle of non-refoulment. When this and other such instances caught public attention, it came to light that in the course of such deportation parents were being separated from their children with no clarity

on reunification (Hassan, 2022). In light of the recent crackdown on Rohingya refugees, despite the recognition of their refugee status, they are effectively faced with one of two outcomes, either detention, which is often for an indefinite period, or deportation, or both. While in the first case, there is a grave risk of separation of the family, as noticeable from the above example. The latter may have several different implications for the refugee child.

First, in many instances the child may be detained along with the parent. Recently, the government of India drafted and circulated a 'Model Detention Centre/Holding Centre/ Camp Manual' (Singh, 2019). In addition to various other provisions, the manual stipulates that families must not be separated. However, in effect this envisions and accommodates children within a detention centre without accounting for the profound adverse impact it may have on their mental and physical health and development (UNICEF, 2018, pp. 2-3; Alice Farmer & Forced Migration Review, 2013). An account of the Sarai Rohilla detention centre in New Delhi captures this impact in the words "they are not permitted to play or be outdoors" (Sur, 2023). In this regard, the Committee has also noted that the detention of a child based on the migration status of their parent always constitutes a violation of the child's rights, and of the best interest principle (UN. Committee on the Rights of Child, 2012, para. 78).

As a result, it has been proposed that children be treated as Juveniles under the JJ Act, 2015 and tried only by Juvenile Justice Boards under the provisions for children in conflict with law (Menon, M. & Commonwealth Human Rights Initiative, 2020). This approach is *prima facie* problematic as it criminalises refugee children. Further, even the practice of treating the child as a child in need of care and protection under the Juvenile Justice framework is inconsistent with the full realisation of the rights of the child.

Under the Act, a child may initially be placed in a child care institution (usually a children's home), particularly if the parents have been detained as 'foreigners'. Owing to the uncertain legal status of the parents, the child may remain institutionalised without any periodic review of the child's situation which is otherwise mandatory under Section 36(3) of the JJ Act, 2015. In certain cases, even after the release of the parents from detention, the children have remained institutionalised, in clear violation of the principle of family reunification (Paliath, S. 2022).

In order to resolve this dichotomy, the participation of children, and the 'best interest' of the child must form a primary consideration even in determining the substantive rights of parents. The Guahati High Court has already paved the way for the same, albeit to a very limited extent, through its judgment in *In Re State of Assam*, in which it directed for the constitution of a High-Powered Committee to provide details about women declared as 'foreigners' whose children were detained with them, and thereafter, evaluate the eligibility of the mother to be released with the child in the best interest of all parties. While this was an extraordinary measure taken in light of COVID-19, India's adherence with its commitments under the CRC and the overarching framework of child rights requires it to take a similar approach to its treatment of child refugees, favouring the liberty of the family in the best interest of the child.

A Child-Friendly Approach to the Rights and Entitlements of Refugee Children

It is evident that the government in India, in formulating and applying the laws on citizenship has ignored an important constituent that is children. Here, India's failure to sign and ratify international instruments on refugees, and statelessness, has been used as a defence to its lacking immigration policies. However, in the case of children, their claims are given weight by other international instruments that India is bound by, most significantly, the CRC.

Streamlining the process of attainment of refugee status, including of adults would provide a *prima facie* means of preventing detention. The best interest of the child, and the principle of institutionalisation as a measure of last resort should inform the treatment of the refugee child. Further, this should be extended to the determination of immigration status of the parents. As discussed above, cases such as *In Re State of Assam*, align with international obligations under which the family's liberty can be protected so as to secure the best interest of the child.

Further, when a child is apprehended at the border, there should be provisions for the prompt appointment of a Child Welfare Officer, or other social worker to advocate for the humane treatment of the child. For this purpose, Child Welfare Committees should take *suo motu* cognisance of children in

detention centres, and refugee camps, as children in need of care and protection, as empowered under Section 30(xii) of the JJ Act, 2015.

This should counter their present treatment as children in conflict with law (CCL), rather than as children who have fled persecution, and may be separated from their parents, thus needing care and protection (CNCP). The law pertaining to unaccompanied minors should also be clarified to accord them a special status which allows for their legal adoption in case their parents cannot be found.

International best principles stipulate that immigration detention of children of their families should be legally prohibited (Families & Child, 2017, Principle No. 4). Additionally, children should be allowed to remain in family settings, or in "non-custodial, community-based contexts while their immigration status is resolved." The implementation of these principles would ensure neither children, nor their parents are initially institutionalised, and once immigration status is determined the relevant protections may be availed by them on account of their refugee status.

The scope of these protections has been enumerated by the SC and other courts in a number of cases. However, their effective realisation requires the enactment of a refugee law in India. In fact, the proposed Asylum Bill, 2021 categorises unaccompanied children as "persons with special needs" who may enjoy additional entitlements (Tharoor, S., 2021). Clause 35, and 36 of the proposed Bill provide that children of refugees, asylum seekers, and mass influx refugees shall be provided the same healthcare rights, and free and compulsory education that is available to Indian citizens.

This is an important codification of a pre-existing right, which would effectively prevent instances of refugees being denied legal entitlements of health or education on account of inadequate documentation such as Aadhar cards or voter identity cards. Therefore, the enactment of a comprehensive refugee law may go a long way in securing the entitlements of refugee children and should be expanded to cover their nutritional needs, and rights against exploitation.

The right against exploitation is of particular significance for refugee children, who are vulnerable to being recruited for criminal purposes, being engaged in informal child labour, as child soldiers, or being trafficked as slaves,

or for immoral purposes. These risks necessitate the strengthening of the state's legal framework in dealing with refugee children, and a collaborative approach with civil society, non-governmental organisations, and international bodies.

Conclusion

The framework of rights both under the CRC and the domestic law of India applies to all children regardless of status. Therefore, irrespective of India's position on the Refugee Convention, it is under an obligation to protect, at the very least, the rights of children, which must be encompass all rights under the CRC, irrespective of the extent of rights enjoyed by refugee adults.

A significant barrier to the realisation of this conception of rights of refugee children has been the ad-hocism even in the mainstream adult law and policy on the rights of refugees in India, caused in part by India's non accension to the Refugee Convention. When the policy on refugee rights is left to the discretion of the government, in the absence of formal laws, children are bound to be left out.

This is noticeable at all stages of the immigration process, beginning from the attainment of refugee status, which does not account for a child-specific determination of factors constituting persecution, and in the course of which the child remains unheard. A significant concern at this stage is the absence of the child's participation both in the determination of their status as a refugee, and that of their parent, despite each being a concern bearing a direct effect on the child.

This may entail either the detention of the child with the parents without accounting for the impact such detention may have on the child, or a forced and sustained separation of the family. In each instance, the participation of the child, and the consideration of their best interests in detention and deportation related decisions needs to be formalised through procedural and substantial safeguards.

While stateless minors are entitled to a number of fundamental rights guarantees under the Constitution, most importantly, Articles 14, 21, 21A and 23, and 24, the state enjoys a wide discretion in determining their immigration status, and may exercise this discretion to the disadvantage of child refugees. Refugees have been granted a special status by courts in India granting them rights of rehabilitation, non-refoulment, resettlement, nutrition, health and education.

In practice, refugee children are often denied these entitlements. The process of obtaining documentation is complicated by various administrative hurdles, and lack of legal certainty. Consequently, refugee children face the risk of being detained or institutionalised at the border. This is violative of international India's obligations.

International best practice dictates that refugee children be protected and kept in community-settings, rather than be punished. This is possible through a streamlined process of granting refugee status which would entitle 'foreigners' to more expansive entitlements, as well as through a specific enactment on refugees.

The subjects of this research are entitled to the full protection of the CRC and core human rights instruments, and this paper exposes the lack of protections available to refugee children. By doing so, this paper provides a basis for recommendations to eliminate the gaps in the present legal framework. This paper promotes an approach that has due regard to the rights of "all children" regardless of immigration, or citizenship status. Additionally, heed must be paid to the specific vulnerabilities of refugee children who face persecution, loss of identity and family, and a risk to their life and liberty. To resolve these issues, their status as 'children' rather than refugees, or migrants, must inform their treatment.

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VISITATION RIGHTS OF PARENTS IN INDIA: LAWS AND PRACTICES

Palak Sharma[1]

Abstract

After a divorce, the child is the most affected party, experiencing significant psychological and emotional consequences. Custody after divorce is the most convoluted issue in society, the complications arise as to whom the custody of the child should be given and the reasons for it. Traditionally, physical custody was awarded to either the mother or father, but over time, courts have recognized the essential role of both parents in the child's upbringing. Both parents have exclusive roles in the upbringing of the child, physical and mental well-being. Through various cases, the court has established that the welfare and best interests of the child are paramount when determining custody. With time, concepts such as visitation rights and shared parenting have developed. This article aims to explore the meaning and existing legal framework relating to the visitation right of parents, the factors that shape the court's decision in granting visitation rights, the concept of Shared Parenting, the psychological impact of Divorce and Judicial Separation on Child, the doctrine of the welfare of child and the court's interpretation for the same, by briefly touching upon such rights in the international domain.

Keywords: visitation rights, shared parenting, welfare of child, psychological impact

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Introduction

Child visitations can facilitate the continued involvement of both parents in their children's lives after a divorce (Kadir and Kahar, 2020). So, after a marriage breaks, it is not the father or the mother but, their child who suffers the most (D'Onofrio and Emery, 2019). Indian law lacks codified provisions on visitation rights, necessitating reliance on judicial precedents for clarity. But in general terms, these are the legal rights given to the parent or any relative as per the court's discretion to visit the child. Generally, visitation rights are given by the court to address custody-related issues when there are problems in a marriage, and it can lead to the breakdown of the union between the spouses, which could finally result in the annulment of the marriage or a divorce. But it needs to be seen that the child(ren) conceived from their union should not suffer because of their parents' split (Kumar, 2023). Visitation rights are granted to parents to ensure that the child maintains contact with both parents, as the presence of both is considered crucial for the child's overall welfare and development. Due to these reasons, the Court endeavors to help the two parties reach a compromise and gives them both the opportunity to contribute to the child's upbringing. The court considers multiple factors for giving visitation rights of the child, to safeguard the best interests of the child. Moreover, these rights are not exclusively reserved for parents, but they are also given to grandparents in some cases.

Impact of Divorce and Judicial Separation on Children's Mental Health

According to different research, there is a higher chance of child and adolescent adjustment issues, emotional turmoil associated with the conflict resulting in challenges such as academic challenges (such as poorer grades and school dropout), disruptive behaviors (such as conduct and drug abuse issues), and low mood when parents' divorce or separate (Kadir and Kahar, 2020). This is mostly because a child's home life and relationship with parents affect nearly every element of their life, and when a support system is disrupted, it becomes challenging for them to concentrate on their studies or they may perceive their academic performance as less important than their home life (Kabyn, 2023).

There is evidence supporting that divorce can negatively impact academic performance and children of divorced parents are twice or thrice

more likely to drop out from school (D'Onofio and Emery, 2019). It is common for children with a single parent to be questioned by other children and often by adults also about why they have only a single parent and Indian society does not easily accept divorce or separation. In a divorce, the child often unavoidably becomes separated from one of the parents. The behaviour of the parents towards each other during their marriage and the divorce, the child(ren)'s experience of their parents' divorce, impacts how they view society and themselves (Yanamadala, 2022). Children with divorced parents are more likely to face a range of emotional and behavioural issues like increased anger, aggression, anxiety, social withdrawal, and are at an increased risk of mental health issues like depression, substance abuse, anger issues, risky behaviour, and even depression, etc. The impact of divorce on children depends on their age and the circumstances of the parent's divorce (Broadwell, 2025).

Research Methodology

This research adopts a doctrinal method that involves an in-depth analysis of judicial precedents from the Supreme Court and High Courts of India and scholarly literature, including articles, editorials, research papers, international frameworks (e.g., the UK's Children Act 1989), and statutes such as the Hindu Minority and Guardianship Act, 1956; Hindu Marriage Act, 1955; the Guardians and Wards Act, 1890, etc. Foreign legal frameworks specifically of the USA and Canada were also examined in comparison to those in India. It also incorporates empirical data from various countries to understand the prevalence of shared parenting and its benefits. The research adheres to ethical standards by acknowledging all sources and addressing potential biases in the analysis.

Meaning of Visitation Rights

These are the rights that plan how non-custodial parents can spend time with their children, how can they visit their children, and maintain healthy relations with them as children also benefited by getting the opportunity to meet and interact with both parents. In most of the cases, visitation rights are granted to parents who are not granted custody. It is generally the duty of the parent who is living with the child, that the other parent can visit the child without any obstacles. The court many a times also set forth the terms

of visitation rights in visitation schedules, it is seen that the courts generally prescribe outlines for visitation schedules. Custody or interim custody orders are different from visitation rights. They allow the parent without interim custody to see the child without removing him/her from the custody of the other parent.[2] If we see according to Black's Law Dictionary*, "visitation is when a non-custodial parent's period of access to child."* It means an order that helps to establish visiting times for a non-custodial parent. The welfare of a child and the best interest of the child are the paramount principles to be considered while awarding custody or visitation rights. The court has time and again explained visitation rights with the help of judicial pronouncements, in the case of *Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu*[3] the court explained the *Doctrine of Parental Alienation Syndrome,* these are the efforts that are made by one parent to agree with their view point and start insulting the other parent with whom the child is not living, this syndrome makes the child hate or insult the other parent, hence the court also looks at the impact of such factors on the children's health and well-being.

Difference Between Visitation Rights And Custody

The provision for custody is given under various statutes such as the Guardians and Wards Act of 1890. However, conflicts may arise when these provisions intersect with personal laws. In such instances, the courts resolve the matter by prioritizing the child's needs and welfare above the parents' interests. Several types of custody are provided under Section 26 of the Hindu Marriage Act 1955, Section 38 of the Special Marriage Act 1954, and the Hindu Minority and Guardianship Act 1956, among others. When parents get a divorce, the court grants custody of the child to one parent, ensuring that the child is cared for and kept safe. The child lives with the parent who is given custody. In most cases, when one parent is given custody rights, the court also gives the other parent access to the child by granting visitation rights. These rights are based on the fundamental principle that a child should grow up in full awareness and presence of both parents. So, when custody rests with one parent, visitation rights play a pivotal role.

2 *Roxann Sharma v. Arun Sharma*, (2015) 8 SCC 318.
3 *Rajeswari Chandrasekhar Ganesh v. State of Tamil Nadu*, 2022 SCC OnLine SC 885

Visitation Rights of Grandparents

It is not essential or automatic that only biological parents can be awarded visitation rights, grandparents can also be awarded visitation rights. Grandparents' visitation rights differ but if they have a close relationship with their grandchildren and if it is in the children's best interests, grandparents can request court-ordered visitation or custody as it is known that, children are often emotionally attached to their grandparents and vice versa, grandparents are also responsible for the upbringing of the child. Different courts have reiterated the grandparent's right to visitation. In the case of *Biji & Another v. Vijil & others*[4] Kerala High Court ruled that the visitation rights of grandparents are well recognized towards their grandchildren, and it would also include overnight custody for a small time. The Supreme Court had even held that grandparents should be preferred while granting custody of the child after the demise of both parents (Choudhary, 2022). The court time and again held that to ensure the best interests of the children, held that grandparents are an integral part of the family and play a crucial role in the upbringing of children and their love and support cannot be disregarded or undervalued. Therefore, getting the grandparents together with the children would also be essential to their upbringing, especially before any single parent's unilateral actions overwhelmingly influences the highly impressionable minds of young children[5]. Hence it can be concluded that grandparent's visitation rights also play a significant role in the child's physical and mental development.

Visitation Rights Evolving through Judicial Precedents

There is no specific mention of visitation rights in India and so they have evolved by various judicial precedents. In the case of *Aakriti Kapoor v. Abhinav Agarwal*[6], the petition was filed by the mother of five-and-half-years-old girl, in the Delhi High Court. There was some dispute between the petitioner and her husband (respondent), so they decided to separate, and it was decided that the custody of the child would be given to the mother (petitioner), and it was also decided that on the first sunday of every month, the respondent would visit the child. The respondent was further granted exclusive custody of the child for

4 *Biji & Another v. Vijil & others*, Appeal No; 234/2016.
5 *Syed Irshad Ahmed Zaid v. Shazia Anjum*, FA(MAT) No. 123 of 2023.
6 *Aakriti Kapoor v. Abhinav Agarwal***,** 2023 SCC OnLine Del 585

5 days in summer vacations and a few more rights. The respondent then got remarried, and the petitioner also got remarried to a resident of the USA and that's why she filed an application in family court for modification of existing visitation rights. The court decided that she be allowed to relocate to USA with her daughter. However, the respondent would be at liberty to interact with the child through video calls for one hour every Saturday and Sunday. In the case of *Roxann Sharma v. Arun Sharma*[7], the custody was given to the mother, and the visitation rights were given to the father, along with a temporary order prescribing schedules to the father for visits. Visitation rights were defined in India by the hon'ble apex court in the Roxann's case, and it was held that for the healthy growth and upbringing of the child, the love of both parents is required, for the healthy growth of the child, and because of this, the court granted custody to the petitioner but said that the respondent who was the mother of the child would get visitation rights of child, in the present case, the court granted her to meet her child tentatively for at least 3 days and days can be fixed by the parties in front of the learned judge. In the case of *Rajan Jairath v. Mrs. Monita Mehta*[8] the Respondent (Monita) challenged the granting of visitation rights to Petitioner (father), who pleaded for visitation rights, but the court denied giving more visitation rights because the children denied staying with the father in winter and the court held that the children have lost interest in their father and that the court would respect the wishes of the minor children. However, the Court ruled that if the petitioner (father) still wishes to see his children, he may request the trial court to call for children, as the court (Civil Judge) previously ordered so that he can meet his children every second Saturday of the month and hence the new petition was dismissed.

Visitation Rights of Children in Foreign Jurisdiction

Under the United Kingdom laws, the general rule is that it is the child's right to have access to both parents. Parents have a duty to raise their children by giving them clothing, food, and housing in addition to a right to care for the welfare of the child. Section 2 of the Children's Act 1989 explains the Parental Responsibility of children and comprises the duties and responsibilities of both parents. It contains the Child Arrangements Order (CAO) that explains

7 *Roxann Sharma v. Arun Sharma*, (2015) 8 SCC 318.
8 *Rajan Jairath v. Mrs. Monita Mehta***,** 2013 (1) RCR (Civil) 546 (P&H).

with whom a child is to live, spend time or otherwise have contact. The law in the United Kingdom encourages parental contact with their children, limiting contact only when it is best for the child. Contact is the amount of time the non-resident parent spends with the child. Direct contact, or face-to-face communication, can occur during the day or overnight between a parent and child, or indirect communication can also include emails and phone calls, etc. Indirect communication can also take the form of phone calls, in-person meetings, emails, letters, and gifts and parents do not automatically have the right to communicate. In cases when parents have divorced, it is anticipated that the parent with whom the child resides will permit a fair degree of communication with the other parent. Maintaining communication with extended family members, such as grandparents, aunts, uncles, and siblings, can also be facilitated. In the UK as well, the importance is given to child's welfare, According to Section 7 of the Act[9], the court has the authority to order reports regarding the welfare of children from Children and Family Court Advisory and Support Service (CAFCASS) or local authorities. CAFCASS is an organization that works with children and families involved in family court proceedings to ensure the children's voices are heard and their welfare is prioritized.

Laws Emphasizing Child Welfare

Welfare of Child Under Laws

Under Personal Laws

Different laws in India have different welfare provisions for children. The 'welfare' of the child stems from Section 13 of the Hindu Minority and Guardianship Act 1956[10] which stipulates that in the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. Although Section 6 of the Hindu Minorities and Guardianship Act, 1956 designates the father as the natural guardian of a minor son or daughter, this provision cannot override the primary consideration of what promotes the child's welfare. Section 26 of HMA[11] empowers the court to make orders related to custody, maintenance, etc., during times of divorce or judicial separation. To arrive at a just and proper decision,

9 *Children Act*, § 7, 1989.
10 Hindu Minority and Guardianship Act, § 13, 1956
11 *Hindu Marriage Act*, § 26, 1955.

keeping in mind that the welfare of the child is paramount, the court found it appropriate to hear the child's wishes regarding with whom they wish to live (Singh, 2024).

Under the Muslim laws, a mother is entitled to have custody, known as *hizanat* of a male child until he completes the age of 7 years, specific guidelines are given under the Muslim Women (Protection of Rights on Divorce) Act, 1986. Custody for the Christians is governed by Section 42 & 43 of Indian Divorce Act, 1869, and under this Act the court grants custody to the parent who can provide better care and nurturing for the child and may even reject claims if none of the parents can offer a suitable environment for the child's well-being.

Under Secular Laws

Section 17 of the Guardians and Wards Act, 1984[12], to an extent mentions about the welfare of children to be taken into consideration when appointing a guardian. It includes the religion of the minor and nearness of kin to the minor etc. These are the guiding factors laid down under the Guardians and Wards Act, 1890 that determine the welfare of a child. According to this section 6[13] the minor's father will serve as guardian; however, if the minor is under five years old, the mother shall in ordinary cases be the guardian. Also, under Section 29 of JJ Act, 2015, a Child Welfare Committee must be constituted for the welfare of the children who need care and protection and if both the parents are unable or unwilling to look after and provide for the child. Section 26 of Hindu Marriage Act 1955 also explains that minor's well-being and the minor wishes shall take precedence over all other considerations, In Law Commission Report[14] had suggested changes to the Guardians and Wards Act, 1890 for adding visitation provisions as it suggested shared parenting. The report also took reference to the scheduling of visitation rights from Indiana and Michigan, which recommend that a child visits a non-custodial parent once a week on a weekday evening and once every other weekend.[15] In the case of *Goverdhan Lal v. Gajendra Kumar*[16], the court observed that - it is true that the father, as the natural guardian of a

12 *Guardians and Wards Act*, § 17, 1984
13 *Hindu Minority and Guardianship Act*, § 6, 1956.
14 Law Commission Report 257, 2015.
15 Indiana Parenting Time Guidelines at S. 2(D)(1); Michigan Parenting Time Guideline at 7
16 *Goverdhan Lal v. Gajendra Kumar***,** AIR 2002 Raj 148.

minor child, has a preferential right to claim custody of his son. However, in matters concerning the custody of a minor child, the paramount consideration is the welfare of the minor, not the legal right of any party.

Doctrine of Welfare of Child

The doctrine of the welfare of children has developed and evolved through the various judicial precedents over several decades. Indian courts have reiterated repeatedly that it is the welfare and well-being of the child which is the paramount consideration and not the legal right or the welfare of the mother or the father. Moreover, family courts in India are mostly governed by the theory of "*Parens Patriae*," meaning that the state is the "parent" or guardian for children who are unable to care for themselves or when their legal guardinas are unable or unwilling to care for them, and therefore, judgements should maximize a child's well-being. In the case of *Saraswatibai Shripad Vad v. Shripad Vasanji Vad*[17], the court said that it is the welfare of the minor and of the minor alone that is the paramount consideration. While awarding the Custody, welfare of Child is seen to be the paramount consideration, *"Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the court must regard the minor's welfare as the first and paramount consideration, any may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father" (HLE, 2022).* Even many international laws also advocate for welfare of children.

Welfare of Child Under International Laws

Under the U. K.'s, Children Act 1989 court determines any question concerning the upbringing of a child or administration of a child's property, etc. in taking such decisions, the child's welfare shall be the court's most crucial factor. Further, the United Nations Convention on Rights of the Child also calls for the best interest of the child should be taken. Article 3 of the UNCRC[18] mentions that *"all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative*

17 *Saraswatibai Shripad Vad v. Shripad Vasanji Vad*, 1940 SCC OnLine Bom 77.
18 *United Nations Convention on Rights of Child,* Article 3, 1989.

authorities, or legislative bodies, the best interests of the child shall be a primary consideration." Directing all the institutions and statutory bodies to take actions while giving priority to the best interests of the child. Therefore, the welfare of the child is a significant concern in international law as well.

Court's Ruling Regarding Factors Relevant to the Welfare of Child

In the case of *Purvi Mukesh Gada v. Mukesh Popatlal Gada*[19] *S*upreme Court reiterated that it was decided that the welfare principle would take primacy over all other pros and cons in the court's decision-making process. 'Welfare' contains broad interpretation, and it covers material and physical safety, emotional well-being, education, health, happiness, social interactions and moral welfare of the child (Pareek, 2021). Since Indian law fails to establish any criteria or rules for determining what is welfare, the court has to make this determination after carefully considering all the relevant facts and circumstances of each case. In the case of *Smriti Madan Kansagra v. Perry Kansagra*[20]*,* apex court held that the welfare principle is the public interest that stand served with the optimal growth of the children. It is well recognized that children are the supreme asset of the nation. The rightful place of the child in the sizeable fabric has recognized in many international covenants, which are adopted in this country as well. Child-centric human rights jurisprudence that has evolved over a period of time is founded on the principle that public good demands proper growth of the child, who are the future of the nation." In the case of *Vivek Singh v. Romani Singh* Supreme Court reiterated that the principle of welfare of the child follows a dual approach, the first approach is to ensure best environment for growth of child and the second approach is of public interest that is linked with proper growth of the child. In the case of *Gaurav Nagpal v. Sumedha Nagpal*[21], the hon'ble apex court observed that the primary concern for the Court is the welfare of the child. However, this welfare is not solely determined by financial means or physical comfort. The term 'welfare' should be interpreted in its broadest context, encompassing the child's moral and religious well-being in addition to their physical health. The bond of affection must also be considered. Finally, in the case of *Lahari Sakhamuri v.*

19 *Purvi Mukesh Gada v. Mukesh Popatlal Gada*, Criminal Appeal No. 1553 of 2017.
20 *Smriti Madan Kansagra v. Perry Kansagra*, Civil Appeal No. 3559 of 2020.
21 *Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42.

Sobhan Kodali[22], encapsulates almost all factors that should be considered while determining the welfare of child, the factors such as maturity and judgment, mental stability, ability to provide access to schools, moral character, ability to provide continuing involvement in the community, financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.

Shared Parenting

Meaning of Shared Parenting

Shared Parenting is a parenting arrangement where both parents actively participate in raising their child, provide love and guidance, share responsibilities and make decisions together, even after separation or divorce.

This is a new concept in the jurisprudence of custody. This concept came into being because of increasing interest in shared parenting and has grown among parents who no longer live together, after divorce or separation but, both wish to spend time with children. This system is prevalent in countries such as US, UK, Canada Australia, etc., but has still not gained much momentum in India. Shared parenting is believed to be beneficial for the child as there is a lesser impact on the mental growth of the child due to the parents' separation or divorce. Separation from parents is an adverse childhood experience which can have long term detrimental effects on the health and psychological well-being of a child. Shared parenting allows for parenting to be a joint responsibility between both parents, ensures that the child is not permanently separated from either parent, has access to the love and resources of both parents, thereby helping in the healthy upbringing of the child.

The first International Conference on Shared Parenting by International Council on Shared Parenting (ICSP) was conducted in year 2014, in which consensus was arrived at many points related to shared parenting including definition of "shared parenting" that defined as *"the assumption of shared responsibilities and presumption of shared right regarding the parenting of children by fathers and mothers who are living together or apart"* (Kruk, 2014).

22 *Lahari Sakhamuri v. Sobhan Kodali*, 2019 (7) SCC 311.

Importance of Shared Parenting

Shared Parenting is interlinked with the best interest of the child as the presence of both the parents is important for the proper growth and development of the child. Shared Parenting involves joint decisions for the child and sharing his/her financial and other responsibilities which include the health, safety, choice of the school, curricular and extracurricular activities, social life, religious life etc. There are several studies highlighting the importance of the child living in the care of both parents, and misbehavior and anger issues were found to be more common in children under sole custody. Further, children in shared parenting are found to do better in measures, relating to depression, deviance, school effort and school grades.

Studies show that the children report better emotional health, lower levels of anxiety and depression, and improved academic performance as compared to those in sole custody arrangements (Hall, 2024).

The Family Law (Shared Parental Responsibility) Amendment Act, 2006 introduced changes to Australia's family law. It encouraged more shared and co-operative parental planning (Roy, 2026). There has been steady increase in Australia in percentage of children in shared parenting as compared in 2002 – 2003 which was around 9.4% increased to 25.9% in 2021 – 2022, and further increased during the COVID pandemic, as the parents had the to share the care of the children due to work from home. In such shared parenting, the child related expenses were being shared by both parents. Though shared parenting can sometimes also come with financial abuse and violence, it reduces the financial burden of single parents and encourages financial contribution from both parents (Smyth and Chisholm, 2024).

Shared Parenting in India

In India, shared Parenting gained momentum after the drafting of the Consultation paper on 'Adopting a Shared Parenting System in India',[23] by the Law Commission of India in 2014. The landmark case of *Smt. Savitha Seetharam v. Sri Rajiv Vijayasarathy Rathnam*[24] the Karnataka High court endorsed and observed the concept of Shared Parenting and gave it greater

23 Law Commission of India, Consultation Paper. (2014, 10 November). Adopting a Shared Parentage System in India.

24 *Smt. Savitha Seetharam v. Sri Rajiv Vijayasarathy Rathnam*, C.C.C.No.1236/2015

importance after the divorce of parents. The court dwelt into the factors that should be considered while preparing the Joint Parenting Plan. The court further held that personal profile of parent, their educational qualification, residence, economic and social status, etc. are all crucial factors to be considered while granting custody.

Policy Recommendations

Guidelines for Visitation Across Various Countries

Visitation Guidelines from various countries such as USA, Canada, are serve as a model for parents to develop a parenting time plan that works for their family. In the State of Indiana, non-custodial parents retain the right to reasonable parenting time with their child, unless the court conducts a hearing and determines that such visitation would pose a risk to the child's physical well-being or substantially impair their emotional development. These guidelines provide detailed schedules for parenting time, tailored to the child's age and development. The schedules aim to ensure that non-custodial parents maintain regular and meaningful contact with their children. It divides the schedules into three categories, that includes infants and toddlers (up to 3 Years), children aged 3 and Older, and teenagers, catering to specific needs required for the children in different age group. For instance, infants require frequent but short visits to build stability, ensuring the balance between the rights of parents and the best interests of the child.[25]

In Canada, according to Section 20 of the Children's Statute Reform Act, the law says, "*A parent has the right to see their child, visit them, and also the right to ask questions and get up-to-date information about the child's health, education, and well-being.*" There are four types of visitation rights in Canada, namely, fix parenting time, reasonable, supervised and no visitation right which happens only in some extreme cases, where the visitation is detrimental to the child's needs and safety (Huinink, 2025).

Visitation Guidelines in India

Indian family law presently lacks a uniform framework governing custody and visitation cases, leaving significant presence and opportunity for judicial discretion. Judges' individual backgrounds, experiences, and inherent

25 Indiana Rules of Court, "Indiana Parenting Time Guidelines".

biases can significantly influence their decisions. Consequently, the absence of uniform guidelines contributes to inconsistency in judicial outcomes, leading to unpredictable and divergent custody and visitation orders, even in similar situations.

Therefore, amalgamation of the best practices relating to visitation rights from different countries combined with Indian socio-cultural contexts of parenting that are informed by research in child psychology and development can help India to draft robust, effective and child-centric guidelines for the visitation rights which are truly in the best interests of children. However, directly adopting these guidelines from other nations may not be feasible due to significant cultural differences. The guidelines should be nuanced enough to incorporate different and diverse cultures of India, prioritizing the best interests of children, and could provide detailed, age-specific parenting time schedules. Like Indiana's guidelines, India can categorize visitation schedules based on different age groups. That prioritize the developmental needs of children, ensuring regular and meaningful contact with both parents, while allowing for flexibility to accommodate individual circumstances. A detailed set of Visitation Guidelines could prove highly significant in ensuring that all judges have a consistent framework to follow, which in turn, would help mitigate the variability in judicial decisions and promote fairness. Further, the Visitation guidelines should be dynamic and flexible, open to necessitating adjustments due to changes in circumstances over time in society.

In conclusion, the visitation guidelines should *firstly*, include the uniform pattern for visitation rights across the country, while the visitation schedules should also accommodate different schedules for holidays including festivals, public holidays etc. *Secondly,* the visitation guideline should include provisions when there are allegations of abuse or neglect, ensuring that decisions are made with the child's safety as a priority. *Thirdly,* there should be mandatory parenting programs for parents and family members going through a divorce or separation and counselling for the child(ren), in order to ensure that every member of the family (including parents, children, siblings, grandparents and other caregivers or significant others connected to the child) has adequate life skills and emotional coping skills to cope with the adversity of divorce/ separation. In addition, strict procedures should be there including penalties and mandatory counselling sessions for parents who fail to facilitate visitations or restrict the other parent to visit the child.

Other than the visitation guidelines, there should be framework for the mandatory training and capacity building for the judges of family court, focusing on child psychology and the importance of maintaining parent-child relationships post-separation. Additionally, the incorporation of shared parenting within the guidelines, which includes, the expectation that both parents remain actively involved in their child's life, regardless of custody arrangements, and that decisions regarding the child's welfare are made jointly.

Conclusion

India lacks specific statutory provisions governing visitation rights, though there are evolving case laws for the same. While there are multiple factors influencing granting of visitation rights including cultural and societal norms, the paramount consideration is the welfare and best interest of the child. It is crucial to ensure that the child is not deprived of parental love due to conflicts between the parents and that a safe and secure environment is provided for the child's development (Desmarchelier et al., 2022).

With divorce becoming more common in Indian society, it is becoming increasingly difficult for individuals to cope with the complex responsibilities of parenting that come in the aftermath of divorce and separation, which invariably cause a devastating impact on the child's psychological well-being. It is therefore imperative that there are legal safeguards, in the form of Visitation guidelines, that include and encourage Shared Parenting, that could contribute to mitigating the trauma of the children going through the adversity of their parent's divorce / separation as well as protect child rights and enable the psychological wellbeing of the child.

In view of these considerations, there is an imperative need for policymakers to implement clear and comprehensive, nuanced and detailed guidelines on visitation rights, ensuring that judicial decisions are consistent, well-structured and uniform, reducing disparities that can arise from varying interpretations of the law. Law can lead the path in helping society to embrace the concept of shared parenting that recognizes the importance of both parents in child's life post-divorce, by introducing the legal framework that advocates for Shared Parenting. Therefore, the guidelines ensuring the best interests of the child are the need of the hour, to ensure fairness and stability for children post-divorce.

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THE BEST INTEREST OF THE CHILD IN CUSTODY DISPUTES

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Abstract

The "best interest of the child" is a central guiding principle for decisions regarding custody, guardianship, and adoption of children. Laid out in Article 3(1) of the United Nations Convention on the Rights of the Child (CRC), this principle places an obligation to prioritize a child's interests over parental rights. In India, the discourse around this principle in child custody battles has been shaped by statutes such as the Guardians and Wards Act, 1890 (GWA) and the Hindu Minority & Guardianship Act, 1956 (HMGA) as well as judicial decisions based on the unique facts and circumstances of the case. Earlier, a myopic view focused on discrediting a parent's fitness was the norm in deciding the best guardian. Now, courts take a much more positive view, focusing instead on finding the best environment for the growth of the child. However, the subjective nature of the application of this principle, existing gaps in rules and regulations, and inadequately trained personnel to handle the lifecycle of custody battles are still areas of concern. Against this backdrop, this article is an earnest attempt to examine the usage and effectiveness of this principle in Indian custody decisions. It advocates for reforms such as introducing trained assessors, fostering mediation, and facilitating formalized joint parenting agreements to resolve the highlighted issues. It espouses that the legal system will be much more successful in defending child rights amid custody disputes if it redirects its attention from short term gratification to long term stability for the child.

Keywords: guardianship, best interest of the child, custody disputes, convention on the rights of the child (CRC)

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Introduction

The "best interest of the child" standard in Article 3(1) of the Convention on the Rights of the Child (CRC) (United Nations General Assembly, 1989) acts as a North Star to uphold child rights by recognizing their inherent vulnerabilities. One such area where this principle is applied in true spirit is in custody and guardianship decisions. As a substantive right, it places an obligation on the State to put the child's interest in decision-making at the center, as opposed to the exclusive protection of the legal rights of the parents. It is a principle of law that mandates, where there are two different interpretations of the law, the application of that interpretation which best promotes the welfare of the child. It also builds procedural safeguards to hold the state accountable for its decisions and determinations of what is actually in the best interest of the child (Goldstein, 2015). Protection of this principle is essential for two fundamental reasons: it upholds the dignity of the child as a person and is a very significant investment in the future population dividend of the nation (Vivek Singh v. Romani Singh, 2017). In this context, studies on the use of the "best interest of the child" principle in Indian custody proceedings are necessary in order to appreciate its application and its effect on the well-being of children.

India's Custody Laws and the Best Interest Principle

India's laws relating to custody have been influenced by the Victorian notion of "parens patriae," under which the state became the residuary guardian. During the colonial era, the Guardian and Wards Act (GWA) of 1890 was enacted, which recognized the father as the natural guardian but allowed for state intervention in the event of his unfitness (Bajpai, 2005). Surprisingly, Sections 17 and 39 of the Hindu Minority and Guardianship Act (1956) had applied elements of the "best interest" doctrine, mandating consideration by courts of the age, sex, religion, and personal wish of the child in appointing or revoking guardians.

Post-independence, the courts started giving significance to the welfare of the child, away from the erstwhile trend towards paternal custody. Even in Vegesina Venkata Narasiah vs Chintalpati (1970), where the father was considered suitable, custody went to the mother, on the grounds of placing emphasis on continuity and stability in the rearing of the child. In L Chandran vs Venkatalakshmi (1980), custody was granted to the maternal grandparents, with the court categorically enunciating that "children cannot be treated as chattel,"

interpreting Article 21 of the Indian Constitution to place on record the overriding importance of the welfare of the child. For Hindus, the GWA was supplemented by the Hindu Minority & Guardianship Act 1956 (HMGA). Sec 6(a) of Hindu Minority and Guardianship Act (1956) designates the father as the "natural guardian" with the mother assuming the role only "after" the father. However, in Geeta Hariharan vs Reserve Bank of India (1999), the court took a wider interpretation of the word "after" allowing the mother to be the natural guardian even during the father's lifetime if circumstances warranted, such as father's neglect or lack of competence. While Section 6(a) does not explicitly grant equal status to the mother as a natural guardian compared to the father, courts have consistently interpreted it in conjunction with Section 13, which prioritizes child welfare. This approach allows for a liberal interpretation of custody laws.

For Muslims, while the father's natural guardianship is officially recognized, the laws of Hizanat give priority to the child's welfare and deem the mother best fit to take care of the child in the tender years (Mumtaz Begum vs Mubarak Hussain, 1986). Also, all the marriage or matrimonial laws in India, except the Dissolution of Muslim Marriages Act, 1939, have provisions regarding the allocation of the custody of children in a matrimonial dispute. Additionally, India is bound by its obligations under the U.N. Convention on the Rights of the Child (CRC) to ensure that the child's best interest is a primary consideration in guardianship and custody matters.

To summarize, while India's custody laws initially prioritized the father as the natural guardian, judicial interpretations have evolved to emphasize the welfare of the child. Despite the presence of gendered provisions, courts have increasingly applied the best interest principle to override statutory constraints in individual cases.

Application of the Best Interest Principle in Indian Jurisprudence

In the leading case of Nil Ratan Kundu vs Abhijit Kundu (2008), the Supreme Court of India (SC) recognized that "custody is a human problem that must be solved with a human touch." It highlighted the need to provide proper care to a child's comfort, happiness, health, education, and mental growth while ensuring that they are left in stable, loving, and morally healthy surroundings. In deciding which of the guardians is best situated to satisfy these basic needs, it involves an examination of a plethora of factors.

Financial stability is very much preferred, but what it means can vary greatly. In Gaurav Nagpal vs Sumedha Nagpal (2008), custody went to the mother even though she had very limited finances. In K Narayanna Rao vs Bhagyalakshmi (1983) and Manjit Singh vs Jaswant Kaur (2017), custody went to the father because the mother was supported by her elderly parents financially. These decisions raise questions about whether the courts view financially dependent mothers as good parents only until a child is in his or her young adult years, and why it appears better to upend a young person's already established family life with his or her mother than to require the father to become financially accountable.

Parental availability and work commitments also affect custody decisions. In Suresh Babu vs Madhu (1984), the father's demanding schedule led the court to award the custody to the mother. However, in Thrity Hoshie Dolikuka vs H.S. Dolikuka (1982), the SC overruled a decision that penalized the mother for being a working woman wanting to send her daughter to boarding school. The ruling rejects traditional parental roles based on employment status, asserting that a woman's working status is irrelevant in determining her ability to raise a child. However, it sets different standards for working fathers and mothers when determining the best-fit guardian.

Legal conflicts involving a parent or guardian also impact custody decisions. In cases of abduction or kidnapping of the child (mostly by the father), as seen in Elizabeth Dinshaw v. Arvand Dinshaw (1987) and Chandrakala Menon v. Capt. Vipin Menon (1993), courts have often expected the left-behind parent to forgive such an offense with the rationale that the child needs the love and attention of both parents. In both cases, the child's custody was given to the aggrieved mother, and visitation rights were given to the offending father. Where there have been allegations of domestic violence sometimes even leading to the mother's death, courts have taken a stricter view that superseded the father's rights as a natural guardian. In Kirtikumar Maheshankar Joshi vs Pradipkymar Karunashankar Joshi (2022) and Shakuntala Sonawane vs Narendra Khaire (2003), the courts awarded the custody to the maternal uncle and grandmother respectively, deeming them fitter guardians. In cases of proven child sexual abuse by the father, courts grant exclusive custody to the mother and may permanently bar the father. If the risk comes from a parent's relative, supervised access is allowed to that parent. Non-compliance of maintenance awards is

another area of conflict with the law that courts have taken into consideration. In Mohd Ayub Khan v. Saira Begum (2002), the husband sought custody of his seven-year-old son under Shariat law. But the court observed that he couldn't have had the best interests of his child since he kept dragging his wife through litigation while refusing to pay maintenance for child support.

A child's choice has a great bearing on custody battle outcomes. In Smriti Madan Kansagra v. Perry Kansagra (2021), a child's favorable perception of his father influenced the court's decision to grant custody to him. In Savitha Seetharam v. Rajiv Vijayasaathy Rathnam (2020), the court took special cognizance of the child's wish to be jointly parented since he didn't want to miss out on either the affection of his paternal grand-parents or his younger siblings. Noting the maturity of each parent to support the child's relationship with the other parent, the court ruled in favor of "shared parenting" in the best interest of the child.

Among the acrimonious custody battles, courts take the negative behavior exhibited by parents as a significant deterrent. In the case of Kumar V. Jahgirdar vs. Chethana Ramatheertha (2004), the Karnataka High Court overturned a Bangalore family court order giving custody to the father on the premise that the mother's remarriage to a celebrity sportsman was erroneously described as unbecoming of the child's upbringing. Similarly, in the case of Vivek Singh vs. Romani Singh (2017), the court took into consideration "parental alienation syndrome," wherein the child was smartly manipulated to prefer one parent over the other, ultimately causing severe emotional distress to the child.

Overall, the jurisprudence is one of subtlety, weighing legislative provisions against the shifting needs of society and specific case considerations. But those subtleties create openings for inconsistencies, and the necessity for that reason of more specific procedural rules.

Challenges In the Implementation of the Best Interest Principle

Applying the best interest rule in custody cases is not without challenges either. First, the subjective nature of what is "best interest" tends to slow down the judicial process, especially in family courts. Such delays can end up leaving children in the care of guardians who are "not the best fit" in the interim (Charlow, 1986). Second, the judicial system is beset by gross skill deficits required to work effectively with families and children. There's an urgent need

to induct trained evaluators who possess sensitivity toward the impact of divorce on children of different age groups, are familiar with the success of custody and visitation arrangements on a child's development, and have experience of using interview, observation, and play methods to understand a child's preferences. Third, with the myriad of subjective considerations that must be weighed, little exists in the way of procedural safeguards against judges' own biases influencing the final custody determination. Any documentation of a child's development milestones, their coping mechanisms of separation from either parent, parents' parenting philosophies, their method of handling conflict with an ex-partner, and psychological history – all of which could reduce subjectivity – is grossly inadequate (Clark, 1995). Fourth, while courts do recommend mediation to prevent the chaos of a parental conflict from muffling the interest of the child, it often fails amid existing hostility between parties (Law Commission of India, 2015). This leaves much to be desired to achieve a genuine expression of the "best interest of the child" principle in custody conflicts. Considering how far we have already come, to give it our best shot now at the last mile is not just a legal obligation but an ethical imperative.

Conclusion

The solution is to bring in comprehensive reforms across the custody conflict lifecycle. First, mediation between competing guardians should be encouraged. Moving beyond the traditional method of conflict resolution, courts need to put more emphasis on parent collaboration. Perhaps, parents who have the maturity to set aside their egos to meet the developmental needs of the child should be viewed more favorably by the courts in deciding custody. To allow joint parenting plans to be considered viable, the legislature needs to lay down guidelines on how access and responsibility (especially sharing expenses of the child) are to be shared. Second, the true voice of the child needs to be recognized. It is important to induct trained assessors who can help children articulate their genuine opinions without fearing repercussions. Finally, keeping in mind the debilitating impact that custody wars have on children, the object of best interests would be served if the lens of the system could change towards pre-empting conflict around a child. That demands a cultural acceptance of seeing co-parenting by estranged spouses or their family members as a healthy option. Thus, by adopting a holistic approach that integrates legal, psychological, and social perspectives, India can move closer to a future where every child caught in a custody crossfire is empowered to thrive.

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SAFEGUARDING DIGITAL CHILDHOOD: A CRITICAL ANALYSIS OF THE IT ACT, 2000 IN ADDRESSING CYBERBEGGING AND SHARENTING

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Abstract

In the rapidly evolving digital age, the rights and safety of children in cyberspace are increasingly at risk. This article critically examines the Information Technology (IT) Act, 2000, in the context of protecting digital child rights, focusing on emerging concerns such as cyberbegging and sharenting. It highlights the inadequacies of the Act in addressing these issues, despite its role as a foundational framework for managing cybercrimes in India. Through an analysis of legislative gaps, judicial responses, and international practices, the paper underscores the urgent need for comprehensive reforms. Suggestions include introducing specific provisions to criminalize cyberbegging, establishing regulatory mechanisms for sharenting, and aligning India's digital laws with global standards like the GDPR. The article emphasizes the dual need for robust legal frameworks and societal awareness to safeguard children in the digital sphere. Strengthening digital child rights is essential to ensure a secure and equitable environment for the next generation.

Keywords: digital child rights, cyberbegging, sharenting, IT Act 2000, digital privacy laws

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Introduction

"There can be no keener revelation of a society's soul than the way in which it treats its children." (Mandela, 1995)

In his speech at the Launch of the Nelson Mandela Children's Fund in Pretoria, South Africa, on May 8, 1995 Nelson Mandela has quoted these words very succinctly so as to iterate how society's true progress is reflected in how well it protects its most vulnerable members, especially children, from the dangers from various issues. In this digital age it is our responsibility to protect and nurture them because they are the foundation of our future. In today's world, technology has become a central part of our lives, and children are increasingly exposed to the risks that come with being online. It is easy to frame and implement laws for any vulnerable section of society who can understand their rights and duties but it is very difficult to frame and implement laws for a vulnerable section who cannot understand their rights and duties. Children, people of unsound mind are some of the example of those vulnerable groups who cannot understand their rights and duties. Additionally, various factors like social and demographic factors, lack of experience (Carcelén-García et al., 2023), limited critical thinking skills, inherent trust in others makes children digitally more vulnerable towards any cybercrime (Boston Consulting Group, 2022) or 4Cs which includes content risk, conduct risk, contract risk, contract risk (OECD, 2023).

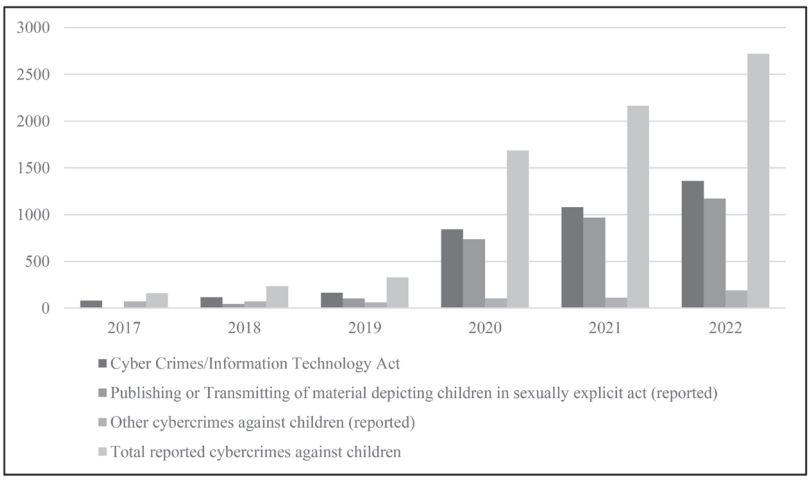
This research project, aims to looks at the gaps and limitations in the IT Act, 2000 when it comes to protecting digital child rights. It focuses on two main issues: cyberbegging, where children are exploited through digital platforms for begging; and sharenting, where parents share too much information about their children online, often without realizing the long-term effects. Furthermore, this article critically analyzes the efficiency and sufficiency of IT Act, 2000 to deal with these issues and to suggest some recommendations for filling the gaps of IT Act, 2000.

Critical Analysis of the Efficiency and Sufficiency of the Information Technology Act, 2000

Technological advancements have made our life both easy and difficult at the same time. If we take a simple example of our phone then it makes our life easier in clicking our pictures, messaging our friends, keeping our documents

etc. but at the same time there is always a risk that your pictures, messages or documents got leaked and misused by someone else to make your life difficult. This misuse of technology which affects society at large is termed as cybercrimes in general. Nowadays, almost all the crimes which were happening in our living space are got shifted on to virtual space because it is more efficient to commit crime where your identity is hidden. From 2019 to 2020 there was an increase 400% cybercrime against children (Economic Times, 2021) which is still persisting as shown by NCRB data (NCRB, 2017-2022):

Sr. No.	Year	Cyber Crimes/ Information Technology Act	Publishing or Transmitting of material depicting children in sexually explicit act	Other cybercrimes against children	Total reported cybercrimes against children
1.	2022	1360	1171	189	2720
2.	2021	1081	969	112	2162
3.	2020	842	738	104	1684
4.	2019	164	102	62	328
5.	2018	117	44	73	234
6.	2017	79	7	72	158



Reported cybercrimes against children in India

Source: Based on data collected from NCRB Reports

Furthermore, the Supreme Court of India in the case of *Just Rights for Children Alliance & Anr. vs. S. Harish & Ors.*, 2024 has recently reversed the

judgment of Madras High Court which held that watching child porn is not an offence. The supreme court has even shown its sensitivity towards the use of term 'Child Pornography' and held that this term has failed to capture the full extent of crime thus, gave the term 'Child Sexual Exploitative and Abuse Material' (CSEAM). The court also observed that Sec. 15 of POCSO Act penalizes storage or possession and that there is no requirement for the actual transmission of the material for the section to apply thus, it is the intention which is being punished and not the commission of any criminal act in the traditional sense.

The IT Act, 2000 is the foundational legal framework for managing cybercrimes and regulating electronic communication in India. However, its efficiency and sufficiency in addressing child rights, particularly in emerging issues like cyberbegging, sharenting, child pornography, and age restriction in social media usage by children, face several challenges. These are some of those issues which if happen in our living space then they are criminalized by statutes like Bhartiya Nyay Sanhita, 2023 (hereafter BNS, 2023), POCSO Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter JJ Act, 2015) etc. but what if these issues are emerged on virtual space, does India have efficient and sufficient statutory mechanism to deal with these issues.

Begging v. Cyberbegging

Begging is an act of gaining something from someone on the ground of sympathy and the supreme court of India recognized it "as a socioeconomic problem in which people are forced to beg for their livelihood due to lack of education and employment" (Hindustan Times, 2021). However, there are two categories of beggar, first category includes forced beggars on which honorable supreme court has put emphasis and the second category includes beggars by habit who are lazy and see begging as a way out (Aulia Simanungkalit & Pasaribu, 2023). The distinction between the first and second category is of choice. First category of beggars doesn't have a choice therefore a ban on such begging wouldn't be efficacious (Deccan Herald, 2021). However, the second category of beggars have a choice but consider begging as business therefore such ban on such begging would be efficacious.

The term 'begging' is defined under Sec. 2(8) of JJ Act, 2015 as "(i) soliciting or receiving alms in a public place or entering into any private premises

for the purpose of soliciting or receiving alms, under any pretense; (ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal". Furthermore, Sec. 76 of JJ Act, 2015 and Sec. 139 of BNS, 2023 provides stringent provisions of punishment for offender who employ/kidnap/ maim/objectify/use children for begging. Judiciary has also taken stricter stances against both offenders and governments for preventing the instances of child begging in living space. Recently, in the case of *Yatharatha Foundation v. Union of India*, *2023* the Delhi High Court ordered Delhi government to rehabilitate the children rescued from child begging. The Calcutta High Court has also taken a *suo moto* cognizance in 2020 for the violation of child rights in child abuse cases which includes child labor, child begging etc. and held that, "The State must also take steps to ensure that all the JJBs and CWCs in the State have proper video-conferencing facilities and other infrastructural facilities and a report to that effect should be filed in terms of this order" (In re Court on Its Own Motion, 2020). Child begging of such kind is prohibited by both legislature and Judiciary in living space but when it comes to virtual space, none of them have taken any positive to curb such instances.

Cyberbegging refers to the act of begging on social media which has increased due to pandemic in many countries (Aulia Simanungkalit & Pasaribu, 2023). Its instances ranges from urgent medical donation to systematic long-term donations (Shrinidhi, 2007). The situation become worse when people started employing/ kidnaping/ maiming/ objectifying/ exploiting children online by forcing or manipulating them into begging through digital platforms. It is a phenomenon which happens with us on daily basis but we either ignore it or if support it don't look into the veracity of fact. For example, there are various news article websites in which between the article they show images/videos of a disabled child asking for help for its treatment, on social media platforms like Tiktok (Raisha Shahana et al., 2023), WhatsApp, Facebook, Twitter on regular basis we came across various posts, news, images, videos which objectifies/ maims a child. Although in the case of *Avnish Bajaj v. State, 2008* the court held that, "intermediaries (like websites) should be vigilant in ensuring that exploitative content involving children is not uploaded or circulated." But the IT Act lacks specific provisions addressing cyberbegging. Existing sections on obscene content or illegal activities online, like Sec. 66 and Sec. 67, may be

invoked in extreme cases of exploitation, but they do not directly address the nature of cyberbegging. Furthermore, enforcement mechanisms within the IT Act are poorly equipped to track and penalize cyberbegging. Law enforcement agencies may struggle to monitor and identify online exploitation efficiently, especially when content may not overtly appear criminal. Therefore, there is a need of a regulatory mechanism to deal with this issue.

Parenting v. Sharenting

Parenting in its traditional sense involves nurturing, guiding, and protecting children as they grow into responsible and independent adults. It includes making decisions that ensure the child's well-being, development, and safety. In today's digital world, however, a new concept has emerged: sharenting. Sharenting refers to the practice of parents or guardians sharing excessive amounts of information about their children on social media platforms often including photos, videos, and personal details (Ugwudike et al., 2024). Sharenting expert Stacey Steinberg defines sharenting as, "what parents do when they talk about their children outside the family circle, A post on social media with a picture, a blog post about their child, a video through a messaging platform like WhatsApp, etc" (UNICEF, 2025).

While parents share these moments out of pride or to connect with family and friends, sharenting can lead to significant privacy risks for the children. These risks include exposure to identity theft, online predators, and misuse of personal data. The practice also raises ethical questions about children's right to privacy and how their digital footprints, often created without their consent, could affect their future (Ugwudike et al., 2024). In this context, IT Act, 2000 which is India's key legislation for regulating cyber activities comes under scrutiny. While it addresses several aspects of digital privacy and security, it lacks specific provisions to protect children from potential harms caused by sharenting. This gap necessitates a closer look at how the law can be strengthened to balance parental sharing with the protection of children's privacy in the digital age.

The IT Act, 2000, currently lacks any specific provisions that regulate how much personal information parents can share about their children on social media platforms. While Sec. 43 and 72 offer some general privacy protections, they don't apply to situations where parents, rather than strangers

or hackers, expose their child's private information. This means that if a parent overshares their child's details, such as their full name, school location, or daily activities, without considering long-term privacy concerns, the law doesn't step in to protect the child. Unlike in Europe, where the General Data Protection Regulation (here after GDPR) grants children the right to privacy and the right to be forgotten, India's IT Act does not offer similar safeguards for minors.

India has enacted Digital Personal Data Protection Act, 2023 (hereafter DPDP Act, 2023) which on the same lines of GDPR grants children as data principle the right to privacy and right to be forgotten under Sections 12(1) & (2), 9(2), 8(7) and 6(4) & (7) of DPDP Act, 2023. However, there is still a grey area where parents/guardians act both as data fiduciary and data principle for their children. Under DPDP Act, 2023, data principal is defined as "the individual to whom the personal data relates and where such individual is a child, includes the parents or lawful guardian of such a child" and data fiduciary is defined as, "any person who alone or in conjunction with other persons determines the purpose and means of processing of personal data." In these types of situations, parents/guardians act on their whims and fancies, and do whatever they want with the personal data of their child sometimes knowingly and sometimes unknowingly. This shows that IT Act, 2000 was inherently inefficient to deal with the issue of sharenting and more specifically these types of situations. Furthermore, the new DPDP Act, 2023 is also not quite sufficient to deal with the issue at hand because it does not provide a regulatory mechanism for the situations where parents/guardians act both as data fiduciary and data principle for their children.

The study of Livingstone and Stoilova shows that "5-7 years old child has a sense of privacy rules but struggle to comprehend the consequences of their actions, privacy 8-11 years old child is governed more by rules than internalized personality and 12-17 years old child is aware of privacy risks, assess opportunities and risks but tend to focus on short-term benefits when making a decision." (Livingstone et al., 2019). This shows that an age-based consent model can be developed which has child centric approach that will help children in sharing their views, supporting their different experiences, and encourages a safer and inclusive online space. Additionally, parents/guardian should be seen as trustees of the data of children so as to minimize the misuse of children's data.

Suggestions for Addressing these Emerging Cyber Issues

The IT Act, 2000 was initially created to handle issues related to cybersecurity, e-commerce, and online crimes. However, the rapid growth of digital platforms has led to new problems, especially for children, that the law does not adequately cover. One such issue is cyberbegging, where vulnerable children are exploited online to beg for money. According to the National Institute of Rural Development and Panchayat Raj in their working paper, "Improvised Beggary in India: A Case Study of Telangana State," the causes of begging include destitution, lack of care for vulnerable groups, and the absence of institutional support (Sarap et al., 2021). Issues like cyberbegging and sharenting also found their relation to these three fundamental causes.

To effectively tackle these emerging issues, the IT Act needs to be updated and the following suggestions can be used to strengthen the legal protections of children in the digital age, ensuring their safety and well-being online. Article 39(f) of the Constitution of India mandates the state to provide children with opportunities and facilities to develop in a healthy manner. Article 12 of the United Nations Convention on the Rights of the Child suggests that weightage should be given to the views of children in accordance with the age and maturity. These provisions can be used as front runners to take legislative, executive and judicial steps for protecting the rights of children in this digital age. Following are some issue wise suggestions which are analyzed and derived from various legal reports, case law, and international practices to provide a more comprehensive approach to safeguarding children:

Begging v. Cyberbegging

Legislative Reforms

Specific provisions should be added to the IT Act to criminalize cyberbegging and the online exploitation of children. These provisions should clearly define online child labor and cyberbegging, making it easier for law enforcement to act against offenders. Also, central government should be given power to make rules and regulations to prohibit it. Furthermore, laws like children's image rights (LAW No. 2024-120, 2024) can be implemented which aims to protect children's privacy through the lens of right to their image. Cyberbegging should attract severe penalties, including imprisonment and

fines, similar to penalties for child labor and exploitation. The JJ Act, 2015 provides penalties for child labor, and similar rules can be applied for digital platforms (Bachpan Bachao Andolan v. UOI, 2011).

Technological Interventions and Community Based Approach

Digital tools like fact checkers, community notes should be implemented to monitor and flag activities (Drolsbach et al., 2024) that involve children being forced to beg or work online. Concerned authorities can cooperate with social media platforms and digital payment processors to track suspicious behavior.

Parenting v. Sharenting

Legislative Reforms

New child data protection law should be introduced to specifically address the issue of sharenting and deal with the grey area of DPDP Act, 2023. These laws should require parents to seek age-appropriate consent from their children before sharing personal information online. If the child is too young to give consent, parents should be guided by strict privacy standards and there should be an authority to look into all the matters which are related to use of personal data of children.

Policy Measures

The government should implement educational campaigns and instructive courses aimed at parents, making them aware of the risks associated with oversharing their children's data online. This can be modeled on campaigns related to child safety. Justice K.S. Puttaswamy v. Union of India (2017) case established that every individual, including children, has a fundamental right to privacy. This ruling opens the door to argue that sharenting may infringe on a child's right to privacy, potentially extending to the Right to Be Forgotten once the child reaches an age where they can understand the implications of their data being shared online (Justice B.N. Srikrishna Committee, 2018).

Conclusion

Law and society are dynamic in nature and the evolution of one inevitably leads or should potentially lead to the evolution of the other. Whenever there is a particular issue then it can be dealt either with the evolution of society or with the evolution of law. Evolution of society is something which can't be done/

happen abruptly, while on the other hand evolution of law is something which can be done overnight if it justifies the public interest. Therefore, to tackle contemporary issues such as cyberbegging and sharenting both legal reform as well as social awareness is necessary. The strength of a society lies in how well it safeguards the rights and dignity of its children, especially in the unseen spaces of the digital world.

In this light, one of the major concerns discussed above is cyberbegging, where children are exploited on digital platforms, manipulated into begging online. Unfortunately, IT Act, 2000 lacks specific provisions to criminalize such activities, making it difficult for law enforcement agencies to take effective action. To address this, new laws focusing specifically on online child exploitation are urgently needed. These laws should work in coordination with digital platforms to monitor and flag suspicious activities while imposing strict penalties on those who exploit children in the online space. Similarly, the rising issue of sharenting, where parents unknowingly compromise their children's privacy by oversharing personal information on social media, is another area of concern. The current IT Act does not regulate how much personal information parents can share, leaving children vulnerable to privacy breaches. To protect children's digital rights, new regulations should require parents to obtain appropriate consent before posting sensitive information about their children. Along with legal measures, awareness campaigns are essential to educate parents about the potential long-term impacts of oversharing in the digital space.

The IT Act, 2000 laid the groundwork for regulating cyberspace; it needs significant updates to address the evolving digital threats children face today. Although the DPDP Act, 2023 is enacted to deal with many of the issues but as proven in the project, there are still lacunas in it. Thus, the various offences and penalties provided under IT Act, 2000 are not efficient and sufficient for dealing with the contemporary digital child rights issues. Therefore, by implementing stronger legal measures and raising awareness, we can create a safer, more secure digital environment that not only protects children but empowers them to navigate the digital world responsibly. Only through these efforts can we ensure that children's rights and dignity are upheld in this fast-changing technological landscape.

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STATUS OF CHILDREN'S CONTRACTUAL RIGHTS: IN THE REALM OF SPORTS & TELEVISION

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Abstract

This research paper analyses the legal status of children entering into contracts in sports and television industries in India. The research questions relate to the legal status of children's contracts in the industries and how the response in India is different from the UK and Australia. Following doctrinal research methodology, this research analyses relevant legislation, court precedent cases like Raj Rani vs Prem Adib and Master Sagar Prakash Chhabria v. Board of Control, and secondary writings to analyse the existing legal scenario. Analysis reveals that while India's legal regime is protectionist in declaring children's contracts void ab initio, the approach may inadvertently limit opportunities for young talents compared to other nations that permit beneficial contracts. The comparative analysis reveals the necessity for Indian legal reforms to reach a balanced regime offering protection and opportunity. The paper proposes tangible legislative reforms like the recognition of beneficial contracts, judicial oversight mechanisms, trust accounts of wages, and other education programs to better protect the interests of children while allowing them access to legitimate opportunities in the sports and entertainment industries.

Keywords: sports, entertainment, children, contracts, legislative reforms

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Introduction

Vaibhav Suryavanshi created a history by becoming the youngest player to ever play for a team in Indian premier league. At the age of 13 years Vaibhav will be playing for Rajasthan Royals in the IPL 2025, but this raises a question: can Vaibhav sign a contract with Rajasthan royal even after being a minor? To answer this question, we need to assess the intersection of children's contractual rights with sports and television which presents a complex landscape that requires thorough examination. As children exhibit tremendous talent in various fields, when they tend to turn this talent into a profession they are forced to enter into various kinds of contractual agreements. But having such contracts opens a new realm of invaluable opportunities for development and growth while fostering resilience which are essential to navigate through life's challenges. Legal structure is not the same between various jurisdictions which govern such contracts and due to different legal structure, the rights of the child also changes its shape creating a gap between child and his goal. As the Indian contract act of 1872 presumes that all contracts where a child is a party are deemed to be "Void ab intio" to safeguard a child from getting exploited. It's not the same case with some other country jurisdictions such as the UK and Australia which permits children to enter in the contracts under specific circumstances, making them able to make the contract more in their favour and aligned in their interest. These differences underscore the critical imperative of reform in the Indian legal system to better address the aspirations of young athletes and entertainers. This paper focuses on these principles of law, compares international standards with the Indian context, and attempts to offer practical measures towards improving the contracting environment for Indian minors by steering away from an ab initio void approach into a more contextual framework that grants rights to, yet protects, a minor. With a focus on global practices, India can support an ecosystem that builds young talent in sports and entertainment while helping children do well in competitive arenas and protecting the interests of the children.

Research Questions and Methodology

a. What are the legal implications in India for minors entering into contracts within the realms of sports and television?

b. How do the legal approaches to minor contracts in India compare with those in other jurisdictions like the UK and Australia?

`This research adopts the Doctrinal approach, focusing on the analysis of legal principles, statutes, and case law relevant to validity of minor's acts in Sports and Television in India. The primary sources of data are secondary data in understanding the current legal scenario and subsequently analysing validity of minor's act in sports and television. For collection of the required data, we undertook research on various secondary sources. They include statutes and legislative texts, judicial decisions, academic journals and articles, books and treatises, and Government reports and white papers. Analysis is the diligent examination of the secondary data collected for the intent of determining trends, themes, and pertinent legal principles of the research issues.

Legal Framework

In section 11 of Indian Contract Act (ICA), it is explicitly mentioned that to enter into a contract the parties in a contract must be competent and of sound mind (The Indian Contract Act, 1872, s 11). This leads to the development of the concept of inability to enter into a contract. The age of majority is attained by a person when he/she attains the age of 18 years.

As per the Indian Contract Act anyone below the age of 18 years has been considered as minor. There cannot be the element of competence to enter in a contract when one of the parties is minor (child), is insane or when she/he is disqualified by any special law, to which he is subject. The Indian Contract Act targets the wellbeing and protection of children as well as their interest for which the Indian Contract Act restricts them from entering into a contract as their interest can be exploited by the obligation to fulfil a contract.

The law holds an idea that all the children don't possess the capacity to enter in a contract on account of their ineptitude to make decisions and understanding of the intricacies of contract. The principle of estoppel of section 115 under Indian Evidence Act (section 121 of Bhartiya Sakshya Adhiniyam 2023) is not applicable on children (minors) (The Indian Evidence Act, 1872, s 115.; Bharatiye Nyay Sanhita 2023, s 121).

A child cannot ratify a contract once they become major because the contract in itself was void from its inception. The precedent in the case of "Mohiri Bibi vs. Dharmadas Ghosh" held that the minor's contracts were void from its inception (ILR (1903) 30 CAL 539 (PC). As the child's incapacity to take any decision makes him/her lack the competence to enter into a contract, ultimately making the contract void ab initio. This landmark judgment in the case of "Mohiri Bibi vs. Dharmadas Ghosh" established the fundamental principle of minor contracts being void ab initio of the Indian Contract Law, which later got consolidated with various statutes such as:

- Indian Contract Act 1872-The ICA declares any contracts involving minors (children) to be "void ab initio" which means that the contract is considered as void from the beginning as it never existed at first place and no contract ever came into existence. The law is based on the principle that minors do not possess the maturity or understanding to make a decision of binding in nature.
- Children (Pledging of Labour) Act, 1933 (Pledging Act): The said Act was enacted to curb the exploitation of children by restricting contracts that pledge a child's labour. According to this act, Contracts under which a guardian pledges the labour of a child are Void unless (The Children (Pledging of Labour) Act, 1933).

1. The contract is not injurious to the child.
2. "The only benefit the child receives is reasonable wages for their work".

However, the act has been abolished in 2016, and this created a gap for child labour contracts.

- Occupational Safety, Health, and Working Conditions Code, 2020 (OSHWC Code): The OSHWC Code allows adolescents aged between 14 and 18 years to be allowed to work with certain stipulations, for example in non-hazardous jobs and if rigorous safety measures had been in place. The provision tries to balance the need to provide for adolescents' socialization needs and work experience needs while the adolescents' safety and welfare are protected (The Occupational Safety, Health and Working Conditions Code, 2020).

- Child Labour (Prohibition and Regulation) Act, 1986, commonly known as Child Labour Act: It was amended in 2016, introducing sections that regulate employment of children in areas like entertainment and sports. It prohibits the employment of children below 14 years, but provides for exceptions in respect of child artistes employed in entertainment industries, like films, TV, and advertisements, as also in regard to child sportspersons under specific circumstances (The Child Labour (Prohibition And Regulation Act, 1986). These include ensuring the child continues school, working hours are limited, and percentage of the child's wages is saved for his/her future.

Case Studies

The judicial precedent analysis shows what Indian courts have referred to in understanding and applying the law that governs the contracts of minors in the entertainment and sports industries. The rulings in *Raj Rani v. Prem Adib* and *Master Sagar Prakash Chhabria v. Board of Control for Cricket* in India have been chosen to be debated as they are landmark rulings pointing to the conundrum between safeguarding children from exploitation and enabling them to take part in constructive opportunities. These instances reflect the changing opinion of the courts on the interaction between protection and opportunity and demonstrate the pragmatic challenges of applying the void ab initio policy in those jurisdictions where minority participation is the norm. With this analysis, we can appreciate how a purely protectionist policy in contract law could actually end up doing harm to the very children that it is attempting to protect and hence justify our premise that legal reform is required if the interests of children in these specialist fields are to be further advanced.

Raj Rani Vs Prem Adib (Cine Star Case) (*Raj Rani v Prem Adib, 1948 SCC OnLine Bom 92.*)

Facts

The case is that of Raj Rani, a minor girl, who had filed legal action on behalf of her father Dhirajsingh Muramal against Prem Adib, the employer who had employed her service as an artist in his film career. The agreement was oral which was made on 15th January 1947 and a payment term of Rs. 9,500 per year as wages. The contract was signed on behalf of Raj Rani by her

father because she was a minor. Subsequently, the defendant also breached the contract due to defaults of Raj Rani and her refusal to pay him the agreed salary.

Legal Issue

The main legal issue was whether the contracts which were signed on behalf of the minors were valid and enforceable according to the Indian law.

Judgment

On 21 June 1948, the court held that the contract was unenforceable as the plaintiff was a minor at the time she made the contract and Indian law does not authorize the doing of a contract by minors except in a few statutorily authorized circumstances. Although the court did recognize that such contracts would need to be entered into via guardians in order to be potentially enforceable, it continued on to find that contracts entered into on behalf of children are void ab initio unless statute provides otherwise.

Implications

The implications of this decision are extensive in regards to the rights of children in television and sport. It promotes that children are in no manner bound under contract and creates a protective barrier against exploitation when working in the sport and film sectors. The decision reaffirms that the interests of the child need to take the highest priority over commercial interests and calls for the law to fall under stricter control to prevent children from being harassed and exploited. It further suggests that a child's participation in contractual transactions must be organized so as to maximize their development interests rather than create grounds for monetary exploitation.

Master Sagar Prakash Chhabria V. Board of Control (*SCC OnLine Bom 6649, 2015).*

Facts

Master Sagar, being a minor, applied to participate in the under-16 Vijay Merchant Trophy. He was born on 12 January 2000 and thus became eligible under the cut-off date of 1 September 1999 set by the Mumbai Cricket Association. The Board of Control for Cricket in India (BCCI) mandated that the players be put through the Tanner-Whitehouse (TW-3) test to ascertain the

age. Having undergone the test, Master Sagar was declared ineligible as the test labeled him as an over-age player.

Legal Issue

The case was concerning whether the age verification process of the BCCI could override statutory documents such as birth certificates, and more broadly, whether sporting governing bodies could issue rules that might be in conflict with official legal documents in regard to minors.

Judgment

On 18 November 2015, the Bombay High Court also ordered in Master Sagar's favour. The court held that the TW-3 test done by the BCCI wasn't conclusive to determine age and stressed that certificates issued by authorities like birth certificates should be given priority over regulations framed by governing bodies. It is on this basis that the court granted Master Sagar permission to play the tournament.

Implications

This ruling has significant implications for minors' contracts and sporting qualifications by placing statutory documents above governing body rules that are arbitrary. It sets a precedent for age verification processes that prioritizes official documents over contractual terms, especially where such contracts may be exploitative. The decision ensures authorities embrace the principle of offering parties to the conflict equal access to only means of dispute resolution aimed at promoting children's development and growth.

The formal determination of these cases indicates that while Indian courts invariably insist on the doctrine of void ab initio in cases of children's contracts, judicial sensitivity towards more lenient reactions in sporting and artistic industries, where insistence on rigid application of traditional contract rules would tend to work discriminatorily against astute children, is on the increase. The Shivani case is one where there seems to be new receptivity in the courts to questioning how protectionist legal systems may be developing to better represent children's interests within professional development frameworks.

A Comparative Analysis

A comparative study of minor contract regimes across different jurisdictions offers insightful views of alternative regimes that can guide

possible reforms in India. The United Kingdom and Australian legal systems have been chosen for comparison precisely because they represent more liberal regimes that balance protection with the facilitation of advantageous contracts for minors in sports and entertainment. In comparison with India's absolute void ab initio policy, these jurisdictions have evolved sophisticated doctrines that appreciate the worth of certain contracts to the advancement and future of minors. Through examination of these different approaches, we can isolate certain mechanisms that successfully balance protection with opportunity—principles that can be applied within the Indian context while being sensitive to its distinctive social and legal culture. This examination supports the likelihood that India's present policy is excessively restrictive, possibly excluding genuine opportunities for talented young people in sports and entertainment industries.

The legality of minors 'capacity to contract is an interesting topic that reflects the interplay between protecting minors from exploitation and enabling them to participate in good opportunities in the society. By comparing the jurisprudence of two nations including UK and Australia with India, we can observe both similarities and differences that shape the way minors are allowed to engage in contractual relationships. This comparative analysis not only highlights the nuances of each jurisdiction but also underscores the broader principles of fairness, necessity, and benefit that underpin this area of law.

A talent overlap in the case of capacity to minor contract exists between the Jurisprudence of Australia and the United Kingdom. Under common law, the Age of Majority to Contract was 21 years but was reduced to 18 years by statute in both the jurisdictions (Prowse v McIntyre, 1961; Expert Participation, Family Law Reform Act 1969). Generally, all the contracts which are entered by the minors are taken to be voidable, that is the decision rests upon the minor to accept the contract or to reject the contract but this scenario has a flip side when it comes to India; here, minors's contracts are void ab initio (Proform Sports Management Ltd. v. Proactive Sports Management Ltd. and Anr., 2007). According to Minor's contract act (1987) of U. K such contract is binding in nature on the other party which ultimately provides minor the freedom to decide whether they wanted to continue with the contract or not; which differs in ICA as it is unenforceable owing to its void ab initio nature (Minors' Contracts Act 1987).

In case of young children who don't have the capability to understand the nature of contract are considered as void (R v Oldham Metropolitan Borough Council Ex Parte G; R v Bexley London Borough Council Ex Parte B). Nature does bring exception to every rule so for this rule of minor's contract we have certain exceptions which include beneficial contracts and necessaries. When we talk about the exceptions such as beneficial contracts for minors and contracts of necessities in such cases, the exception of necessaries includes the contracts for items which are essentials, considered as valid contracts for minors. Essentially the necessaries include those items considered basic human needs, such as food, accommodation and medicine. The contracts entered into by the minors are sometimes treated as valid and enforceable by law, which basically depends upon the nature and the concept of the beneficiary in the contract. In case of beneficial contracts, if minors get clear benefits from the contract, like promotion in their career, the sports and entertainment industry are found to be valid and enforceable by law.

For example, in the case of *"Doyle v. White City stadium*", A boxer who is minor entered into a contract which has a criterion for him to follow the rules of the boxing board of control (Doyle v White City Stadium Ltd - Viewing Document - ICLR). It was therefore found that the contract which was entered by the minor was as beneficial as it gives a way of living for the minor, though some of the rules are not on his side. Therefore, the court ruled out that these rules were essential for him to take part in professional boxing. The contracts, wherein by employment a minor earns his living, are considered valid and enforceable. For example, in the case of the court considered that the contract was valid and enforceable in which a band of minors entered into a contract with a manager which was regarded as being beneficial in some ways of employment. In the case of contracts which are found to be unfair and have stringent restrictions on minors are considered to be void and not enforceable. In "*De Francesco v Barnum*", it was found that this is indeed an onerous contract which is not to the benefit of the minor wherein he contracted a restrictive dance apprenticeship agreement which therein incorporates the condition not to get married during the term.

Like in Representation agreement, where having a representative or agent for the contract does not have a requisite contract that does not directly

contribute to the minor's ability to earn a living. Such as in case of *"Proform Sports Management Ltd v Proactive Sports Management Ltd"***,** footballer Wayne Rooney's contract with an agent was not binding because the agent's services were not essential to his career. Rooney was already with a football club, so it was not necessary for him to enter into a representation agreement in order to earn a living. The legality of minors' contracts in jurisdiction of India, UK and Australia provides both commonalities and divergence which are deep rooted in cultural, social and economic contexts. The legality of minor's contract in UK and Australia provides more flexibility that the India

Challenges

The comparative jurisprudence above suggests potential advantages of the UK and Australian models to minors' contracts; however, a critical assessment of India's distinct socio-economic and regulatory context demonstrates significant hurdles to direct legal transplantation. This section addresses these contextual differences to demonstrate why reform should be designed particularly for India's unique circumstance rather than importing alien legal models indiscriminately.

Demographic And Socio-Economic Disparities

India's demographic picture has a constitutional distinction that fundamentally alters the regulatory equation. With approximately 40% of its 1.4 billion population under the age of 18 (Census of India, 2011), India's regulatory challenges are of an entirely different magnitude than in the UK and Australia, where children comprise approximately 21% and 22.8% of their populations, respectively (Office for National Statistics, 2021; Australian Bureau of Statistics, 2021). This demographic situation places exponentially greater regulative demands across different regional contexts with unequal levels of development.

This socio-economic variation in India further contributes to such complexity. Its Gini index of 35.7 is comparable to 34.8 in the UK and 34.4 in Australia (World Bank, 2023). India has more extreme inequality. More importantly, India's multidimensional poverty index shows that 27.9% of its population is below multidimensional poverty (UNDP, 2022), which results in economic survival needs potentially forcing accommodation to exploitative

contract terms without adequate protection mechanisms in place. National Family Health Survey (NFHS-5, 2021) reveals that 38.4% of children under five years are stunted, which is a reflection of pervasive socio-economic vulnerabilities that condition radically different environments for contractual arrangements with the more developed economies of the UK and Australia.

Regulatory Infrastructure And Capacity For Enforcement

India's regulatory framework contrasts sharply from these advanced economies. While the UK operates via specialist regulatory bodies like the Office of Communications (Ofcom) with specific child welfare provisions and Australia has the Australian Children's Education and Care Quality Authority (ACECQA) with cross-sectoral regulation, India's system is fragmented. The National Commission for Protection of Child Rights (NCPCR), as set up by the Commissions for Protection of Child Rights Act, 2005, lacks sectoral competence and enforcement authority of the nature of the counterpart UK and Australian organizations.

This fragmentation of the regulatory regime is also seen in the overlapping mandates of the Ministry of Women and Child Development, Ministry of Labour and Employment, and other state government agencies, creating regulatory ambiguity to be capitalized on by beneficiaries of contracts. The Child Labour (Prohibition and Regulation) Amendment Act, 2016, provided for child artists, but enforcement continues to be uneven due to capacity constraints. According to the annual report of the Ministry of Labour and Employment (2022-2023), inspections across the country regarding child labour abuse were conducted to the extent of merely 3,846, which points towards significant monitoring constraints.

Judicial Efficiency And Contract Enforcement

Enforcement of contracts probably poses the biggest obstacle to the application of useful contract provisions from other jurisdictions. According to the World Bank's Doing Business Report (2020), India ranks 163rd globally in contract enforcement, with a mean resolution of disputes taking 1,445 days compared to 437 days in the UK and 402 days in Australia. This judicial inefficiency essentially serves to render the practical efficacy of any useful provisions of the contract nugatory because remedies for breach may be practically out of reach within reasonable time frames.

The Commercial Courts Act, 2015 attempted to counter these delays, but uniform implementation across states still eludes us. The 253rd Report of the Law Commission of India (2020) identified that despite reforms, commercial cases with children involved tended to have procedural complexities due to the requirements of a guardian ad litem, which also contributed to additional delays. These enforcement realities make for a radically altered risk-benefit calculus in accepting beneficial contract terms than in those jurisdictions with more effective judicial systems.

Cultural And Social Context

Cultural determinants play an important role in the feasibility of legal transplantation. Indian family systems are typically more prone to collective decision-making within extended family systems, as 39.7% of Indian households are joint families (National Sample Survey, 2021). This is quite contrasting with the prevailing nuclear family households in the UK and Australia, where 72% and 68% of households respectively comprise nuclear families (Office for National Statistics, 2022; Australian Bureau of Statistics, 2022).

Such structural variation requires divergent responses to prenuptial intervention. While UK and Australian models presuppose parental control with minimal external intervention, India's cultural settings might require a mechanism that enables involvement of the extended family while ensuring the minor's interests are protected. The Supreme Court's observation in Shivani v. State of Haryana (2022) was made with reference to the "unique familial dynamics in the Indian context" that necessitate "culturally attuned legal frameworks for contractual engagements of minors."

Industry Structure And Informality

India's entertainment and sports sectors have an organization that imposes additional complexities. India's Economic Survey (2022-2023) places the estimate of 85-90% of India's workforce within the informal economy, with significant portions of the entertainment and sports sectors, particularly at entry levels. In stark contrast to the UK and Australia, where approximately 13.5% and 16.5% of their respective workforces are in the informal economy (International Labour Organization, 2023). Such informality generates significant regulatory blind spots, since informal arrangements commonly completely fall below

regulatory radar. The Federation of Indian Chambers of Commerce and Industry (FICCI) Entertainment Industry Report (2023) acknowledges that around 42% of initial inducements in the entertainment industry occur through informal arrangements, primarily involving children, throwing gigantic enforcement challenges to even beneficial contract provisions. These intricacies of differences underscore the necessity of a carefully weighted method of reform rather than wholesale transposition of external models. Whereas comparative contract doctrines in the UK and Australian models offer rich schemata, their transposition also needs to consider India's distinctive socio-economic conditions, cultural landscape, and existing regulatory capabilities. Reform needs to balance the protective intent of India's current void ab initio regime with procedures that offer legitimate opportunities for talented minors and solving the Indian context-specific problems.

Reforms

To address the issues of children in sport and television contracts, a comprehensive reform plan must be followed. The below particular reforms would lead to a fair legal system that protects children and enables their rightful position in these industries:

Legislative Reforms

The Indian Contract Act must be modified to legalize advantageous contracts for children in some industries. Such contracts are not void ab initio per se if they are manifestly in the best interests of the minors. In line with the principles emanating from the Australian and British tradition of law, the amendments should ensure that the identification of unfair contracts of exploitation is distinguished from manifestly being in the best interests of the minors. Granting legislative exceptions in the case of sporting and entertainment contracts that pass rigorous fairness tests and grant benefits would bring Indian practice into line with international best practice. Section 65 of the Indian Contract Act also needs to be revised to enable minors to enforce benefits where they have laboured under contracts subsequently declared void.

Additionally, legislatively created law expressly to provide for the well-being of children in sporting and entertainment pursuits should be passed to substitute the ad hoc solution presently prevalent in enactments. This would provide clearer directives to all involved and provide uniform protection in various areas where children are involved.

Judicial Safeguards

Implementation of a judicial overwatch machinery would be a well-welcome assurance to children venturing into contract arrangements. A special judicial process for vetting contracts concerning children in sport and entertainment would serve adequate scrutiny before the contracts are made effective. Judicial guidelines specifying clearly what constitutes a 'beneficial contract' for a child would make it easier to standardize orders passed by different courts and jurisdictions.

The courts would set precedents that would grant protection with scope, e.g., in Doyle v. White City Stadium, where reasonable standards of living agreements for children were upheld despite some limitations. Occasional courts' review of long-term agreements would also ensure equitable treatment as the child grows up and circumstances alter. Such protective provisions would put contracts into fair scrutiny without the intervention of the courts and introduce legal certainty to everyone.

Enforceability Of Guardian-Backed Contracts

The legal stance presently under the Indian Contract Act, 1872, of guardian-backed contracts is uncertain and ineffective to a large extent. Section 11 of the Act renders minors incapable of contracting, and court rulings such as Raj Rani v. Prem Adib (1948) have held invariably contracts made by guardians in the name of the minors as void ab initio unless so authorized by law. This role, though defensive in nature, does not stand in the actual context in which guardians will negotiate on behalf of children in areas such as sport and television. Lack of a good basis for such transactions renders them null and void, and the guardians and minors cannot seek redress for default, as in Raj Rani where monetary compensation could not be recovered despite the attempts made.

A legal framework can be thus proposed to make the contract collateralized by the guardian enforceable with specific terms and conditions without treading the fine line of protection versus opportunity. Firstly, the Indian Contract Act must be modified to make guardian-backed contracts valid up to the extent that the same well serve the best interest of the minor, say, career promotion or skills acquisition in the entertainment and sporting sectors. This would level India's response to countries such as the UK, under Minors' Contracts Act 1987 which anchors some contracts to third parties but provides

room for repudiation of the minor. Two, enforceability would depend on pre-approval from a judiciary wherein a particular court inspects the subject matter of the contract—enforcing reasonableness, decent pay, and protection from exploitation—before enforcing it. This is analogous to the earlier proposed judicial control mechanism and takes its cue from the UK court-approved schemes for children in entertainment, e.g., Denmark Productions Ltd v. Boscoppel Productions Ltd (1969).

Secondly, the system demands that guardians must be fiduciaries, under a statutory duty to act in the best interest of the child ahead of self-interest, with penalty for violation of this duty. In the interest of enforcement, contracts can be subjected to a condition to avail the right of confirmation or repudiation on reaching majority by minors and thereby ensure their freedom and certainty in law simultaneously. It would fill the gap of current ab initio prohibition, making possible the validity of contracts between children such as Vaibhav Suryavanshi and franchises such as Rajasthan Royals, adding guardian's role to the definition and courts. Such change would bridge India's protectionism and the reality of children at work, generating a more equitable regime of contracts.

Financial Protections

Finances must be properly planned in a way to secure the children's income and preserve their economic future. Mandatory trust funds such as the US Coogan Law would ensure a significant amount of a child's income is reserved until he or she reaches age. By this means, the talent or skill of a child would be able to earn a lot of money, and all such money would be saved for them in advance.

Open accounting and regular audits of the income of children would be required to prevent diversion and mismanagement. Limits on the share of income payable to managers, parents and agents would prevent siphoning off high commissions of children's income. Investment endowments out of earnings terms would secure a child's future after his or her sporting or entertainment career, taking into consideration the typically short lifespan of such careers. These measures would create a broad protection umbrella of security that would protect children from economic exploitation and provide them with a secure economic future.

Regulatory Surveillance

Regulation is needed to enforce compliance with protections for children. Independent regulatory authorities to oversee the management of children's contracts in sporting and entertainment sectors would introduce specialist knowledge and regulation. Registration of all children's contracts would improve transparency and oversight for compliance with regulations.

Industry codes of practice and ethical guidelines for the use of children's talent should be developed by consulting industry player, child welfare worker, and lawyer. Severe punishment for offenders violating approved contracts or attempting to circumvent protection would be effective deterrents. Regular inspections and inspection for compliance by organizations regularly hiring out children would enable mistakes in contravention to be caught early before harm is done. This regulatory framework will provide greater protection after political and legal intervention.

Educational Initiatives

Education would be an integral component of any reform strategy towards safeguarding children in contractual matters. Children and guardians would be educated through contractual obligation and rights which would ensure decision-making as an informed process. Children who participate in sports and entertainment activities would be provided with free consultancy by legal authorities which would provide proper legal guidance to even economically weaker individuals.

Sport-specific regulation and material resources would be customized for future talent pursuing careers in sports and entertainment. Mandatory financial literacy course programs for the children who earn enormous amounts of money from their work would introduce them to understanding and allocating their payments constructively. The training plans would enable the child and his parent or guardian to make sound decisions and possess the ability to agree to exploitative terms before signing into contractual agreements.

By this multi-dimensional approach of reform, India is able to evolve a legal framework that appropriately reconciles protection of children with their rightful position in sport and entertainment. These would bring Indian law in line with international best practice and offer effective checks against

exploitation. Now ab initio model of vacuum is honest in protecting its guardia intentions but is the outcome in prejudicing enterprising young Indians from formalizing relations, which will allow them career progress and receive fair remuneration for their input.

Conclusion

A review of children's rights in the television and sporting contexts suggests an interplay of law, social norm, and inherent value of child earnings. As has been charted by the research paper, children have some ability and potentials which not only add to personal development but add a lot to the overall cultural environment as well. The existing legal system in India, however, is evoking contractual rights of children, and that raises some serious issues to such realization of these potentials.

Indian law puts contracts with minors in the general category of the void ab initio, a position which is totally different from the one taken by countries like Australia and the UK, where there is scope for minors to form beneficial contracts under certain circumstances. Not only does this restriction close doors of opportunity for young sportspeople and performers but expose them to exploitation by unscrupulous elements. No legally enforceable provisions exist under which such children can place confidence in protection of their rights and interests and hence restrict their ability to reside in competitive markets.

This, in turn, emphasizes the necessity of reform after such path-breaking orders like Cine Star and Shivani v. State of Haryana. These types of orders prove that the provisions in place are brief and decisions are mostly against the well-being of the children. It is time to reconsider the entire legal framework to fill the gaps pointed out. The tightening or readmission of the protective rules would therefore be in order to make the rights of children better such that sport and the media are not only safer but also better.

In setting up the framework for the environment under which children's rights are inscribed, there needs to be an authority established that is also provided with current hardware to manage compliance with safeguarding laws. This would be for the sake of stakeholder consultations between parents, guardians, sporting organizations, and legal practitioners, making up a fortified system protecting children's interests but promoting their progress. Progressive steps would involve improving legal literacy among youth athletes and their

supporters, in terms of which they would be able to step into contractual territories at will.

Thus, the place of children's rights in television and sport needs a paradigm shift towards a more child-oriented paradigm. In this regard, acknowledgement and respect for the rights of children as performers and not objects in the two areas can create an atmosphere that not only respects their talent but also upholds their welfare. This vow to change will, in turn, result in a more just society where each individual child will have the capacity to achieve their full potential in sport as in the remainder of their lives. The policymaking community and stakeholders should come together in creating the more appropriate legislation that would enact these ideals while, at the same time, making sure that the voices of children will be heard and listened to in all facets of life.

To augment India's judiciary and create a setting where children in television and sports have the opportunity to excel without any diminution of their well-being, some vital policy suggestions emanate from this assessment. For the first time, the Indian Contract Act, 1872, must be reformed to make provisions within it that acknowledge benefit contracts entered into by minors on strict conditions with equity and judicial approval and hence allow rising geniuses such as Vaibhav Suryavanshi to form legally sure contracts. Secondly, the creation of a specialist regulatory agency, as in the UK Office of Communications, is required to regulate children's contracts in such industries, with powers of enforcement to monitor and inspect compliance and working conditions. Thirdly, legislation must require the establishment of trust accounts for a proportion of the income of children, modelled on the US Coogan Law, to protect their financial well-being and deter exploitation. Also, the state will need provision to formulate national programs for children and parents directed at improving legal and financial literacy to equip individuals with improved capability to make better decision-making on contractual levels. These suggestions, based on the comparative UK-Australian experience and the practical realities uncovered in India, provide an even-handed strategy that balances opportunity with protection to ensure that the legal system adjusts to serve the aspirations and risks of young talent in these quickly evolving industries.

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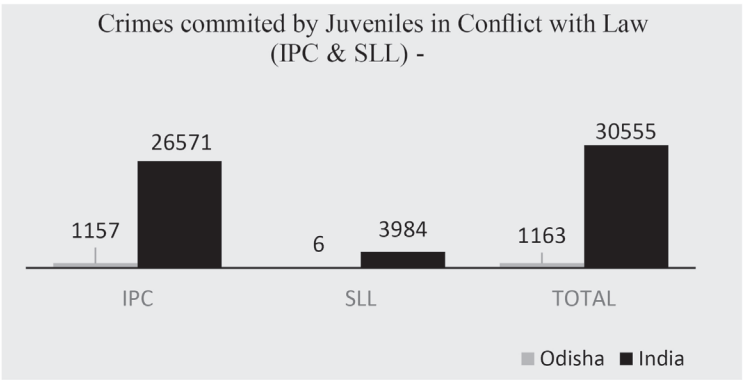
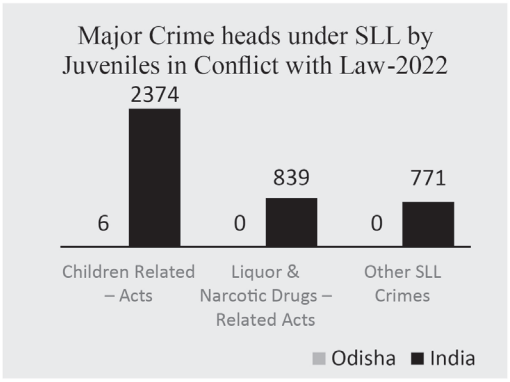
CHILDREN IN CONFLICT WITH LAW IN ODISHA: WHAT DO THE NCRB NUMBERS SAY?

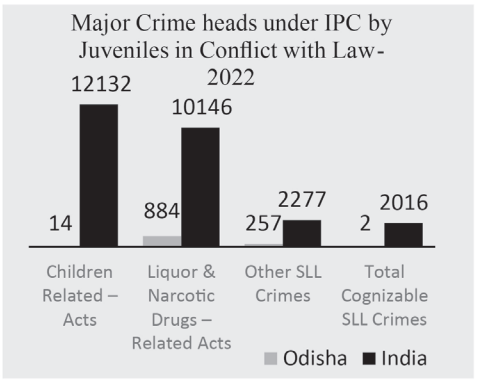
Dr. Pradipta Kumar Sarangi[1]

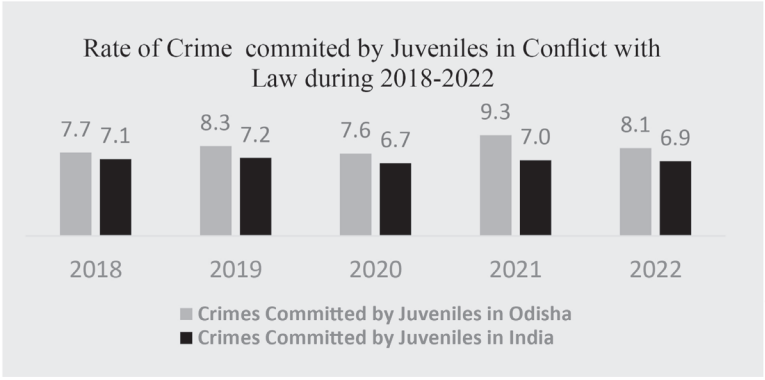
Crimes committed by Juveniles in Conflict with Law under Indian Penal Code (IPC) and Special and Local Laws (SLL)



In India, during 2022, 30555 nos. of cases registered against Juveniles from which 26571 under IPC and 4984 cases under SLL. Similarly, during the same period, 1163 cases in the state of Odisha, from which 1157 cases under IPC and only 6 cases under SLL.



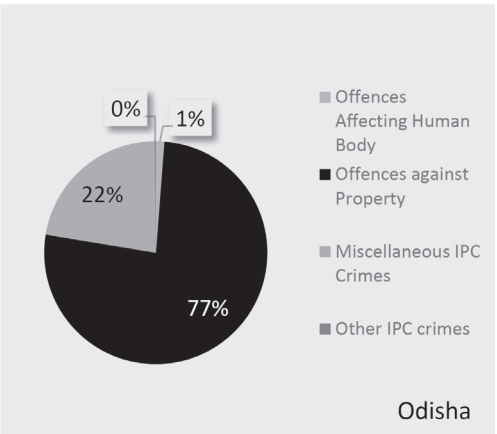


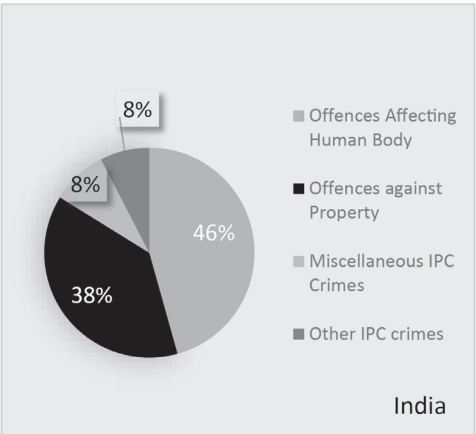


Crime Rate as defined by NCRB (National Crime Records Bureau) is the number of crimes recoded as per One Lakh population for comparing crime levels across different regions in a time period.

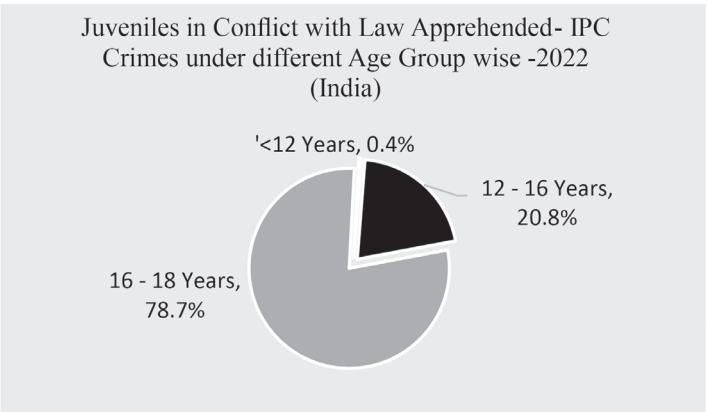
1 Researcher, Centre for Child Rights, National Law University Odisha

Rate of Different category of Crimes committed by Juveniles in Conflict with Law 2022

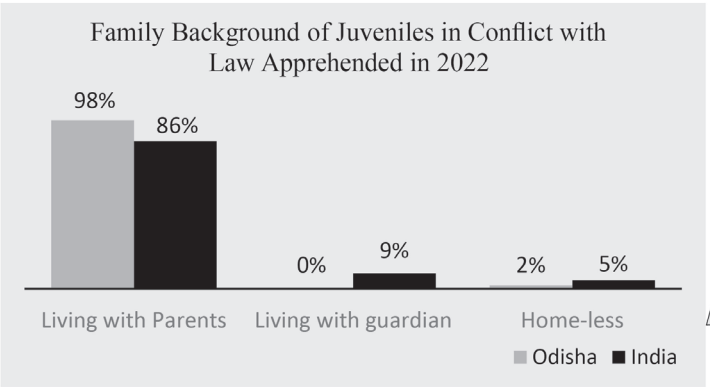




Age Group & Family Background of Juveniles in Conflict with Law Apprehended-2022

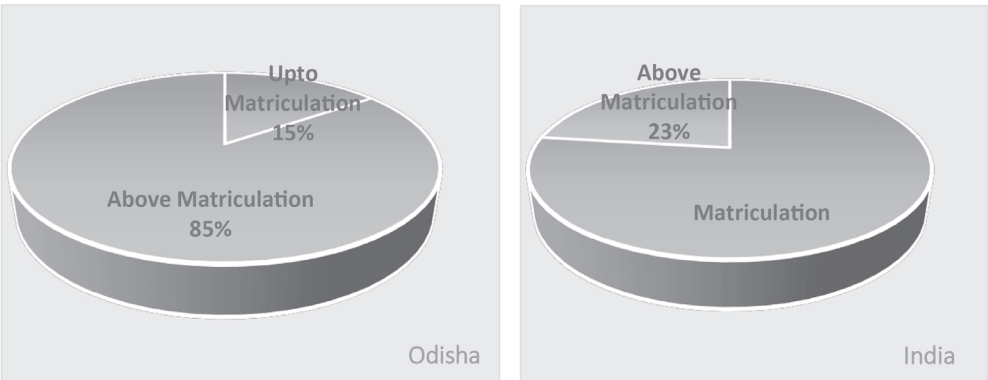


In India, during 2022, Majority of Juveniles in Conflict with Law apprehended under IPC & SSL crimes were in the age group of 16-18 yrs (78.73%), where as 20.82% belongs to 12-16 yrs. and only, 0.44 % belongs to below 12 yrs.

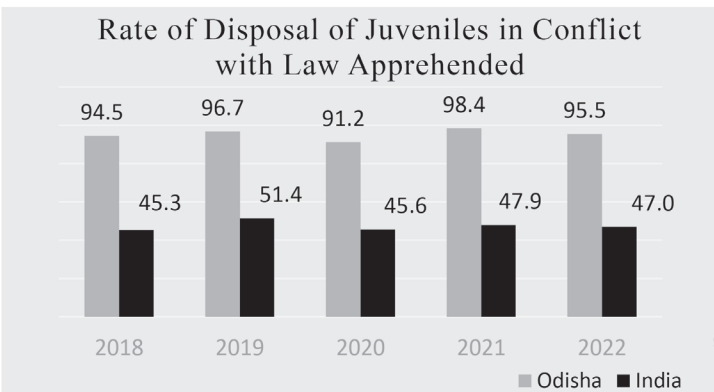


Majority of Juveniles in conflict with Laws apprehended under IPC & SSL crimes were living with their parents. (India-98%, Odisha-86%)

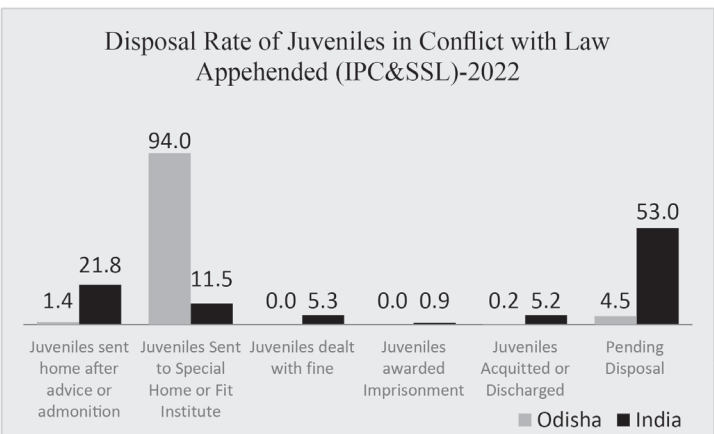
Educational Qualification of Juveniles in Conflict with Law Apprehended in 2022



Rate of Disposal of Juveniles in Conflict with Law Apprehended



The Bar diagram shows the trend of rate of disposal of Juveniles in Conflict with Law apprehended during last five years. The Disposal rate at State of Odisha level are so high i.e above 90% whereas at National average it is limited to 50%.



The Bar diagram shows the trend of rate of disposal of Juveniles in Conflict with Law apprehended under different heads. 94.01% Juveniles sent to Special home or fit institute in State of Odisha, whereas at National average, it is only 11.53%

Source: Crime in India Report, National Crime Records Bureau (NCRB) https://www.ncrb.gov.in/crime-in-india.html

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SOCIETY FOR ENLIGHTENMENT AND VOLUNTARY ACTION & ANR V. UNION OF INDIA & ORS: A CASE COMMENT

Isha Mehrotra[1]

Abstract

Child marriage remains a current social and legal problem despite all efforts by national and international actors to bring an end to the practice. Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors. is on the right path towards reinforcing the prohibition on child marriage and closing loopholes in the Prohibition of Child Marriage Act, 2006 (PCMA). The case, which was moved under Article 32 of the Constitution, threw up some serious issues, among them the inadequacy of the current laws, non-existence of trained Child Marriage Prohibition Officers (CMPOs), and absence of provisions under the law prohibiting child betrothals. The Court held child betrothals to be illegal and called upon the Parliament to enact a law on the subject. It laid stress on preventive measures like community-based campaigns, technological intervention for monitoring, and accountability of the enforcement apparatus. The judgment also recognized the socio-economic determinants of child marriage like poverty, gender discrimination, and illiteracy. By changing emphasis from only penal punishment to active deterrence, the choice has profound policy implications.

Keywords: child marriage, prohibition of child marriage Act, child marriage restraint Act, child marriage prohibition officers

1Isha Mehrotra is a second-year B.A. LL. B student at Dharmashastra National Law University, Jabalpur.

Introduction

Child marriage is the practice of marrying children below the legally stipulated age; it is a crime and a social evil. International efforts and laws have been put in place. Yet, this custom continues in a large part of the world due to patriarchal society, gender inequality, and lack of education and employment. According to the "2019-2021 National Family Health Survey-5, 23.3% of girls under 18 and 17.7% of boys under 21 were married, based on a survey of women aged 20-24 and men aged 25-29 (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2021)." This marks a decrease from the "2015-2016 NFHS-4, which reported that 26.8% of girls and 20.3% of boys were married under the legal age. The prevalence of child marriages in India has steadily declined, halving from 47% in 2006, to 27% in 2015-16 (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2017)." At the national level, close to one in four girls (23%) were married below the age of 18 by 2023. In 2022, about 1.6 million child marriages were conducted, which is about 4,400 a day or three girls wedded per minute (Pandit, 2024). Disturbing as it is, some states still boast exorbitant rates in spite of prevention work. West Bengal and Bihar remain among the worst-hit, with at least 40% of girls wedded in childhood. At the same time, Assam registered an 81% fall in child marriages between 2021-22 and 2023-24, from 3,225 cases to 627 in 1,132 villages (UNICEF, 2023).

Efforts at preventing child marriage have found some success—panchayats and civil society organizations intervened to stop more than 73,000 child marriages in 265 districts in 17 States and Union Territories between 2023-24. Although there is lot that still needs to be done in regards to curbing the pratice of child marriage. For instance, Madras High Court receives at least 5 habeas corpus cases in which the girl's relatives file a petition to rescue the girl back from the husband when both the girl and husband elope at home because of the caste consideration. Often girls in court questioning are discovered to be under 18 years, and court has still not decided a satisfactory solution and so-called honour killing of the inter-caste couple is on the rise (The New Indian Express, 2023).

Despite these significant reductions, no region worldwide is on track to meet the Sustainable Development Goal (SDG) 5 target. Along with 192 other

countries, India has committed to ending child, early, and forced marriages under Sustainable Development Goal 5.3. To achieve this target, the rate of progress in reducing child marriage must increase twelvefold from the pace observed in the last ten years.

Facts

The Supreme Court of India's decision in *Society for Enlightenment and Voluntary Action & Anr v. Union of India & Ors* is a crucial judgement in the continuing battle against child marriage in India. The honourable bench consisted of Hon'ble Chief Justice Dr Dhananjaya Y Chandrachud, Hon'ble Justice Pamidighantam Sri Narasimha, and Hon'ble Justice Manoj Misra. The petitioner (an NGO) had moved a Public Interest Litigation (PIL) under Article 32 of the Constitution, raising serious concerns regarding the Prohibition of Child Marriage Act, 2006 (PCMA), i.e., its failure to deter child marriages. The petition also asked for enforcement machinery to be made effective, sensitization campaigns, appointment of Child Marriage Prohibition Officers, and a general supportive mechanism for child brides in the shape of education, medical care, and compensation.

Issues

- The central issue here was the increase in child marriages all over the country while the Prohibition of Child Marriage Act, 2006, was in force. Thus, the inadequacy of the law.
- Another issue was the dual responsibility given to Child Marriage Prohibition Officers that limit their ability to focus on preventing child marriages.
- Also, there is no law prohibiting or preventing child betrothals in the country.

Decision

The Supreme Court of India held that Child Marriage veiled under Child Betrothals was illegal and implored the Parliament to legislate upon it. Further, it issued guidelines to prevent and prohibit Child Marriage by appointment of CMPOs, introducing accountability measures, preventive "community-driven" strategies instead of focussing solely on improving prosecution and

use of technology for improving monitoring, data collection and enforcement. It also ordered this judgement to be transmitted to the Secretaries of all concerned ministries, Government of India, statutory authorities, institutions and organizations under the respective ministries.

Background

Rukhmabai's case was a catalyst for change in Indian legislation on child marriage, her defiance highlighted the need for legal reforms. Justice Pinhey's judgement in this case catered to the rights of women when Child Marriage was the norm. Similarly, a ten-year-old Phulmoni Dasi died after her husband, Hari Mohan Maiti, attempted to consummate their marriage. Both these cases shook the conscience of the Indian society at that time. The pre-independence cases lead to a development of law in this area.

The National Commission for Women, in its 1995-96 report, recommended a number of amendments to the Child Marriage Restraint Act, CMRA, by appointing Child Marriage Prevention Officers, CMPOs, increasing the punishment for violations, declaring child marriages void, penalizing those who attend child marriages, and making all offences under the CMRA cognizable—that is, they can be investigated without a warrant.

In 2001-02, the NHRC considered the CMRA and recommended even stronger measures like harsher punishments against the perpetrators, prosecution of organizers of mass child marriages, annulment of child marriages within two years from attaining major age by the minor party and provision for maintenance by the husband to the minor wife till she remarries. It also suggested that all dowry and gifts that were given at the time of child marriage be returned and stated that the government should work with NGOs to sensitize the communities on the issue.

After such recommendations, the Government of India annulled the CMRA and came up with the Prohibition of Child Marriage Act, 2006 (PCMA). The Prohibition of Child Marriage Act, 2006 (PCMA) applies universally to all communities, irrespective of religion, and is intended to curb child marriages across different cultural and religious practices. In addition to the PCMA, Tamil Nadu enacted the Compulsory Registration of Marriages Act, 2009, mandating the registration of all marriages irrespective of religion. While this aims to

enhance the legal oversight of marriages, challenges persist, including the potential submission of falsified age certificates to circumvent legal scrutiny.

Despite various legislative measures, the practice continues unabated, particularly in rural and impoverished communities. According to the "National Family Health Survey-5 (2019-2021), approximately 23.3% of girls under the age of 18 were still being married" (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2021), a slight decrease from earlier figures but nonetheless a stark reminder of the challenge at hand.

Analysis

The implications of this case extend beyond the courtroom. It has significant repercussions in the existing framework, children and society at large. "The PCMA states nothing on the validity of the marriage as we have noted above. The Prohibition of Child Marriage (Amending) Bill 2021 was introduced in Parliament on 21 December 2021. The Bill was referred for examination to the Department Related Standing Committee on Education, Women, Children, Youth and Sports. The Bill sought to amend the PCMA to expressly state the overriding effect of the statute over various personal laws. The issue, therefore, is pending consideration before Parliament. Lastly, we note that while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals. Marriages fixed in the minority of a child also have the effect of violating their rights to free choice, autonomy, agency and childhood. It takes away from them their choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used to evade penalty under the PCMA. While a betrothed child may be protected as a child in need of care and protection under the JJ Act, the practice also requires targeted remedies for its elimination" (Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors, 2024).

Problems of the Implementation

The Court analysed Prohibition of Child Marriage Act, 2006, which establishes the legislative marriage age at 21 years for boys and 18 years for

girls, wherein the child marriage was understood as marriage wherein both the contracting parties are a child under Section 2(a) and (b). The Prohibition of Child Marriage Act, 2006, in Section 3, states that child marriages are voidable at the election of the contracting party who was a minor at the time of marriage, and an action for annulment may be filed within two years after having attained majority. But the Court perceived a humongous gap in the law, observing that only marriages through trafficking, force, or fraud are rendered void by Section 12, and all other child marriages are only voidable, which is not a sufficient deterrent to the practice.

The Court reiterated the requirement for stricter provisions to make all child marriages null and void ab initio, in consonance with the purposes of the law to safeguard children against exploitation. The Court then scrutinized the penal provisions contained in Sections 9, 10, and 11 of the PCMA, which penalize adult men contracting child marriages, persons performing such marriages, and those who encourage or facilitate them, respectively. The penalty for the same offences is two years' rigorous imprisonment and a fine of up to one lakh rupees. The Court, however, noted that since there is no minimum punishment under Section 9, it weakens the machinery of enforcement with judicial discretion to award nominal sentences, diluting the deterrent value of the law. The Court also examined Section 15, which makes offenses against the Act cognizable and non-bailable. This intended to increase the ability of the state to prevent child marriages through proactive intervention by law enforcement agencies. But the Court observed the enforcement issue, i.e., the ineffectiveness of Child Marriage Prohibition Officers (CMPOs) under Section 16. The Court reiterated CMPOs be separately assigned with the task to halt child marriages, well trained and equipped, and protected against the charge of administrative burden for the purpose of being responsible and effective.

The Question of Autonomy

The three-Judge Bench observed, "…while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals….it has the effect of violating their rights to free choice, autonomy, agency and childhood…. choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used

to evade penalty under the PCMA" (Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors, 2024).

It is remarkable of the Supreme Court to recognize that this practice has no one-sided effect. As much as a girl child is impacted with such a practice, a boy of young age is also forced into a relationship that he may not be able to comprehend, which is the cause of many mental/behavioural problems with such children. These marriages violate Article 21, i.e., it snatches the right to self-determination, choice, autonomy, sexuality, health and education, right to fully develop and enjoy childhood. It objectifies a child, putting too mature burdens such as pregnancy, earning a living, being with someone other than their own family, etc., violates the right of a girl to make her choice with respect to her reproductive body and other choices related to her body.

The Court had relied on its judgment in Independent Thought vs. Union of India (2017), where it had read down the exception to marital rape in Section 375 of the Indian Penal Code (IPC) in child marriage cases, keeping in view the fact that a child's consent is constitutionally and legally nugatory. It confirmed again that the consent in child marriage is still a legal fiction and made mention of the mandate of the State for protecting the children from sexual exploitation and abuse under the cloak of marriage.

The court extended its consideration to constitutional provisions under Articles 14, 15, and 21A of the Indian Constitution. It was found that child marriage contravened the right of equality under Article 14, namely on its discriminatory effect on girls and upholding gender discrimination and inequality. It also emphasized the constitutional responsibility under Article 21A which gives the right to freedom of and compulsoriness of education between 6 to 14 years of age. Child marriage, by interfering with education, directly infringes upon such a right and facilitates socio-economic inequality.

The Court also emphasized Article 15(3), the children's special provisions, and requested a strong legal framework that truly discourages such marriage and safeguards rights of the children. The rationale of the Court was justified by international treaty commitments such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in which India bound itself to discard practices prejudicing children's well-being and attain gender equality.

Child marriage is also highly endemic in some tribal groups due to deeply ingrained traditions and socio-economic factors. In Karnataka, for instance, a number of tribal youths from Coorg and Mysore have been arrested and detained in Observation Homes under the Juvenile Justice Act for committing child marriages. This indicates the need for rigorous education and motivational interventions among such communities.

The Problem of Vicious Cycle of Socio-Economic Conditions

One of the most remarkable parts of the judgment was the socio-economic determinants' analysis of child marriage. The Court recognised that child marriage is not only a social evil but also a vicious cycle perpetuated by poverty, gender inequality, and lack of education. Hon'ble Justice Narasimha, reflecting on the socio-cultural roots of the issue, stated that culturally constructed values of chastity and virginity are employed by men and families to regulate women's sexuality, marrying off young girls to save family honour and reduce economic burdens. The Court put a strong emphasis that the intervention in child marriage should be intersectional in nature in analysing different intersecting risks of children, particularly girls in vulnerable groups. It clarified that intersectionality is about taking into account factors like gender, caste, class, and location, which tend to cluster together and compound the risk of early marriage. Therefore, prevention efforts must be targeted at the particular context of various communities and address the underlying causes of child marriage, such as poverty, gender discrimination, illiteracy, and strongly ingrained social traditions.

The most striking part of the judgement was recognition of child betrothals as an adverse practice and the court urging the legislature to outlaw this practice for future generations, also declaring it as void and illegal, effectively closing the legal loophole in the legal system. This is a huge achievement for the judicial system, as they have identified a problem before it could be used more than it already has. It logically linked the practice to broader issues such as poverty, gender inequality, lack of education, and inadequate law enforcement. The decision has significant policy implications, particularly in shifting the focus from legislative amendments to enforcement and accountability.

Conclusion

The Supreme Court judgment in Society for Enlightenment and Voluntary Action & Anr v. Union of India & Ors is the hallmark judgment in the battle against child marriage in India. The emphasis upon enforcement gaps and disproportionate effect of child marriages on social, economic, health- mental and physical and education of a child irrespective of gender, the court took a step forward in safeguarding the vulnerable juveniles. The Court's insistence on stricter implementation strengthens the legal system's ability to tackle this issue. The ruling emphasises on enforcement, accountability, and victim support could significantly influence future legal and policy measures aimed at eliminating child marriage. Yet, the law alone may be insufficient to ban child marriage. There should also be intensification in the shape of socio-economic intervention. Further measures such as offering incentives to families for sending girls to school, compulsory secondary education, community participation schemes, and regulation of mass marriage functions can support and complement the impact of banning child marriage. A multi-component approach—fusing legal, economic, and social interventions—would be the most suitable to address the causal factors of child marriage and instil lasting change. The ruling not only reaffirms India's international and constitutional commitments but also provides a precedent for future court proceedings on child protection from harmful practices. To lawyers, the decision is a wake-up call of the judiciary in setting the rights of the most underprivileged in society, especially in the case of settled social usages and economic crisis.

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EVALUATING THE EFFICACY OF ROMEO - JULIET LAWS IN INDIA

Saundarya D Nair[1] & Priyasha Pattnaik[2]

Abstract

This paper explores the complexities surrounding the age of consent in India, which the Protection of Children from Sexual Offences Act (POCSO) raised from 16 to 18 years. Intended to protect children from sexual exploitation, this law has inadvertently led to the criminalization of consensual relationships involving adolescents, with many cases initiated by parents against their will. Despite judicial awareness and empirical evidence of the issue, the legislature firmly rejects lowering the age of consent. The paper suggests a "close-age gap exemption" or "Romeo-Juliet law," which has been adopted in other jurisdictions, as a mitigating measure. This exemption would protect adolescents from prosecution if the age difference between them is within a specific threshold, typically 2-5 years. The paper argues that such an exemption, with a permissible age difference of 3 years and a minimum age of 16 years, would address socio-cultural challenges, legal contradictions and foster adolescent sexual agency, while aligning Indian law with globally accepted principles.

Keywords: consensual relationships,age of consent, POCSO, close-age gap exemption,

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Introduction

The Protection of Children from Sexual Offences Act, passed in 2012, is a landmark legislation that provides a comprehensive legal framework to address sexual offenses against children. Among the many significant provisions introduced by POCSO, one was increasing the age of consent from 16 to 18 years. However, while envisioned to protect the child from sexual exploitation, this provision has had the inadvertent effect of criminalising consensual sexual relations involving adolescents under the age of 18.

An analysis by NGO Enfold India, of POCSO cases from Assam, Maharashtra and West Bengal had revealed that 24.3% of all POCSO cases studied were "romantic" cases, between consenting adolescents. 80.2% of cases had been lodged by the girl's parents, when she pursued a relationship against their will. In such cases, a case of statutory rape is often lodged against the boy, while the girl is treated as a victim incapable of giving consent – thus, denying the sexual autonomy of both.

This social reality of adolescents being sexually active has led to at least 17 High Courts across the country quashing cases of consensual relationships under the POCSO Act ((The Hindu, 2025). Courts have alluded to the "biosocial dynamics" of young adult relationships in observing the need for a more flexible law on the age of consent (Vijayalakshmi v. State, 2021). However, in its 283rd report, the Law Commission of India (LCI) categorically ruled out any possibility of lowering the age of consent to 16 years, despite acknowledging the miscarriage of justice that occurs in cases of consensual relations involving adolescents (Law Commission of India, 2017).

One way to resolve this deadlock between empirical evidence, judicial opinion and legislative reluctance to change the age of consent, is the "close-age gap exemption", colloquially referred to as the "Romeo-Juliet law". This exemption would protect the boy from arrest if the age difference between the boy and the girl who have engaged in consensual sex is below a certain threshold; usually, between 2-5 years. It would apply to cases where both parties were minors, as well as where one party was a minor and one was an adult.This paper explores the jurisprudence around Romeo-Juliet laws from different global jurisdictions, and analyses its applicability within the unique socio-cultural context of India.

Age of Consent: per POCSO & other Laws

Evolution of the Law of Consent

The perception of children as ‘‘powerless,’’ ‘‘unknowing,’’ and ‘‘unable to consent’’ has shaped the understanding of sexual activity, where there is ‘‘a presumed lack of sexual knowledge’’ and ‘‘an inability to make or understand sexual decisions’’ (Kaye, 2005). This notion is central to the concept of ‘‘age of consent’’ which marks the minimum age at which someone is legally recognized as capable of consenting to sexual activity (Black, 1990). Fundamentally, age of consent rules exist to safeguard minors from exploitation. Adverse consequences may arise when individuals engage in sexual conduct before achieving the social and emotional maturity necessary for informed consent, rather than mere ‘‘willingness.’’ While some issues, such as sexually transmitted infections (STIs) and unintended pregnancies, are more prominently discussed and often the object of legislative attention (for example, changing laws with respect to abortion), other consequences such as diminished self-esteem, depression, and substance misuse, are usually kept away from public discourse due to their subjectivity and social stigmatisation (Mathews, 2011). The sexual exploitation of minors is intrinsically linked to unequal power dynamics between them and adult exploiters, leading to potential manipulation, control and dependency.

In India, this age stood at 16 for girls for over seven decades, remaining unchanged since 1940 (Pitre & Bandewar, 2025). However, a shift was observed with the enactment of the gender-neutral Protection of Children from Sexual Offences which raised this threshold to 18 years(POCSO) Act in 2012 (Protection of Children from Sexual Offences Act, 2012).This change mirrors the definition of a child set by the United Nations Convention on the Rights of the Child (UNCRC) 1990, which considers anyone under 18 a minor (UNCRC, 1989) Further tightening the framework, the Criminal Law Amendment Act of 2013 redefined underage penetrative sexual activity as “statutory rape”— a crime where consent simply does not matter (The Criminal Law (Amendment) Act, 2013). This is reflected in the Bharatiya Nyaya Sanhita, 2023 in Section 63 (d)(vi) (Bharatiya Nyaya Sanhita, 2023). The LCI’s 283rd report delineates multiple reasons as to why the age of consent should not be categorically lowered to 16 years, which reflects the evolution of the jurisprudence on this area; this paper critically engages with these reasons in the latter sections.

Contemporary Leanings of the Law

The POCSO Act defines and criminalises all sexual acts with minors. However, such stringent wording of the law overlooks nuances of inconsonance with the age of marriage, close-age relations, and consent. Thus, where two minors engage in a consensual sexual relationship, they paradoxically stand both as victims and perpetrators vis-à-vis each other, although ground-level reality results in boys being overwhelmingly treated as perpetrators and girls as victims. Conversely, this does not imply that girls cannot be implicated as perpetrators. While the law recognizes it, cases involving girls as perpetrators under POCSO are rare (Sekhar et al., n.d.). Societal perceptions, rooted in stereotypes that portray boys as willing participants and girls as incapable of coercion, contribute to this disparity. So, even when boys are the younger partners, they are rarely recognized as victims, leading to underreporting and leniency. Moreover, when girls are charged, they face disproportionately harsh scrutiny due to societal biases that deny their sexual agency.

This paradox is exemplified in same-sex relationships wherein two boys or two girls who are minors are in a consensual relationship as the perceived gender-based power imbalance is absent. However, it is effectively replaced by the additional stigma attached to homosexuality, which has a debilitating effect on adolescents wishing to pursue such relations voluntarily. In cases where one of the parties is a major, it is easier for the courts to place the older partner as a sexual predator, as done in the Bombay High Court case, although the relationship was purely consensual based out of a gay dating app (Samervel, 2022).

Additionally, the philosophical underpinning of the law of consent infantilizes adolescents as completely incapable of understanding the consequences of their acts. The Bombay High Court, in Vijay Chand Dubey vs State of Maharashtra and Anr., recently reflected this reality when it ruled that a 14-year-old minor girl had ‘sufficient knowledge’ and ‘capacity’ to know the ‘full import of her actions’ (Vijay Chand Dubey v. State of Maharashtra and Anr., 2025). The bench stressed that while the offences punishable under Sections 4, 6 and 8 of the POCSO Act are stringent, the same would not deter the Court from granting or refusing bail to secure the ends of justice. It further acknowledged the impact of detention periods on an adolescent male, favouring the release of

young offenders on bail pending trial so that the regressive influences of the jail environment can be avoided, keeping in mind the principle of best interest in the circumstances of a particular case.

While this paper agrees with the ratio of this case, the authors prefer the age threshold of 16 years as the minimum age required to give sexual consent. The Supreme Court, in Tilku Alias Tilak Singh vs The State Of Uttarakhand, concurs with the view of an age threshold of 16 to 18 years – referring to it as an "age of understanding as to what was right and wrong for her" (Tilku Alias Tilak Singh v. The State Of Uttarakhand, 2025).

Lastly, and importantly, a stringent law on consent prevents adolescents from exploring romance and sexuality, both of which are significant aspects of human development. As the Delhi High Court recently observed in State vs. Hitesh, "love is a fundamental human experience, and adolescents have the right to form emotional connections. The law should evolve to acknowledge and respect these relationships, as long as they are consensual and free from coercion" (State v. Hitesh, 2025). The court advocated for a compassionate approach that prioritizes understanding over punishment in cases involving adolescent love. Such an understanding involves a purposive interpretation of age of majority, which takes into account the circumstances of the cases and the views of the adolescent irrespective of minor technicalities over their age.

Thus, it is evident that in recent times, courts have displayed the tendency to recognize that the age of consent law, as it stands, effectively regulates non-exploitative sexual relationships, infantilizes young people and strips them of their autonomy.

Romeo-Juliet Laws

The Romeo-Juliet Law, inspired by the eponymous Shakespearean drama, emerged in the United States as a response to concerns about the criminalization of consensual teenage relationships (Close-in-Age Exemptions, n.d.). It is a legal measure that protects young people who engage in consensual sex, from being prosecuted as criminals for statutory rape, as long as both individuals are close in age.

The implementation and extent of the Romeo-Juliet Law differs widely amongst jurisdictions. In Canada, a close-age gap exemption is in place for sexual activity between fourteen- and fifteen-year-olds and a partner less than five years older (that is, up to nineteen years old), with another exemption of under two years for twelve- and thirteen-year-olds (with a partner up to the age of fourteen) (Hunt, 2009). Such exemptions are also common in the U.S.A., where at least forty-three states have effectively decriminalized sex between teenagers of similar ages (Cocca, 2004).

Table 1:

Age of consent, availability of close-in-age exemption, the year it was introduced, and its key features across various jurisdictions.

Country/ State	Age of Consent	Close-in-Age Exemption	Year Introduced	Key Details/ Exceptions
USA (Florida)	18	16-17-year-olds can engage with partners up to 23 years old	2007	Known as the Romeo and Juliet Law, prevents felony charges.
USA (Georgia)	16	Allows a 3-year age gap for minors aged 14-16	2006	Misdemeanor instead of felony for statutory rape.
Canada	16	- 14-15 years: Partner ≤ 5 years older	2006	Added to Criminal Code in 2006.
Japan	13 (national)	No formal close-in-age exemption	N/A	However, local ordinances raise the age to 16-18 in practice.
South Korea	16	No formal close-in-age exemption	N/A	Sexual activity with a minor below 16 is criminal.
Philippines	16	16-year-olds can consent to a partner within 3 years of age	2022	New law raised the age of consent from 12 to 16.
Australia (Tasmania)	17	- 15+ can consent if partner ≤ 5 years older	2001	Age similarity defenses in place.

Nevertheless, these laws are not without limitations. Firstly, the protections afforded by the Romeo-Juliet Law are contingent upon specific age gaps. If the difference between the individuals' ages exceeds the allowable range, the older party may face prosecution despite mutual consent. Secondly, the law strictly applies to consensual relationships. Non-consensual acts fall entirely outside the law's purview, ensuring that perpetrators of sexual offences are penalised. However, the mere focus on age without looking at the totality of circumstances in such relationships, may mask realities of how informed an adolescent's consent truly was (Pitre & Lingam, 2021). Instead of focusing only on age, primacy needs to be given to the minor's testimony, with the Romeo-Juliet law merely enabling and contextualising the same.

Applicability of Romeo-Juliet Laws In India

The idea of a Romeo-Juliet law in India is not unheard of. In a 2019 ruling, the Madras High Court had called for a close-age gap exception of five years (Madras High Court, Crim. App. No. 490 of 2018, 2019). However, all the pros and cons of such an exception must be viewed within the unique context of India. This section explores two broad categories of challenges to the applicability of the exemption in India– firstly, the social, economic and cultural challenges; secondly, the legal challenges.

Social, Economic And Cultural Challenges

The Marriage Question

While the age of consent is 18 across genders, the minimum legal age for marriage is 18 for women and 21 for men. The taboo around sex outside marriage in India has led to a conflation of the two, tracing back to the 84th LCI Report, 1980, which recommended increasing the age of consent to 18 years primarily because "marriage with a girl below 18 years is prohibited sexual intercourse with a girl below 18 years should also be prohibited" (Madras High Court, Crim. App. No. 490 of 2018, 2019). This reveals a protectionist and conservative attitude by lawmakers, buttressing social norms of chastity and virginity before marriage. The LCI's 283rd Report in 2023 similarly stated that lowering the age of consent would dial back years of progress in the fight against child marriage.

However, the social reality is that adolescents are channelled into early marriage not because they have sex but because sex is socially sought to be contained within marriage in India (Chaudhary, 2024). Stringent laws of 'minimum age' therefore end up restricting the negotiating power of young girls to enter marriages of their own choice (Agnes, 2013). When an adolescent relationship is discovered, families often resort to marriage as a means of avoiding social stigma and potential legal repercussions. By introducing a close-age gap exemption, the fear of criminal prosecution would be alleviated, reducing the pressure on families to push adolescents into early marriage to 'legitimize' the relationship. Thus, far from increasing child marriage, a Romeo-Juliet exemption could serve to mitigate one of its driving factors.

Further, the exceptional nature of the provision, dependent on the adolescent's own testimony and judicial discretion, would ensure that parents cannot use it to justify a forced child marriage. Parental and community-based pressure could be counterbalanced by prioritising the best interest of the adolescent in the particular circumstances of each case, with due priority given to the adolescent's declaration of consent, or lack thereof.

The Health Question

Opponents of lowering the age of consent note that adolescents are often unaware of the consequences of sexual intercourse, and allowing minors to pursue sexual relations would result in unmitigated teenage pregnancies and STIs. However, data from the National Family Health Survey reveals that 6.8% Indian women were pregnant or mothers between the ages of 15-19, even with the age of consent being 18 (Ministry of Health and Family Welfare, 2021). The argument of low awareness amongst adolescents evades the question of spreading greater sexual and reproductive health services amongst them, which is a declared objective of the National Adolescent Health Programme (Ministry of Health and Family Welfare, 2014). It must also be noted that provisions in POCSO, which make it mandatory for doctors, parents, and all private citizens to report sexual activity of adolescents to the police, often prevent adolescents from seeking reproductive healthcare out of fear. Furthermore, medical practitioners may refuse to provide services to adolescents who approach them for sexual-reproductive healthcare, deterred by potential legal consequences.

More importantly, the law on the age of consent ignores the reality of sexual understanding developing gradually in adolescents through exploration and experiences, rather than overnight when they turn 18. Adding a Romeo-Juliet clause to the law could mitigate the fear of prosecution, allowing adolescents to explore consensual sexual relations and better understand their bodies. It would also solve the legal paradox of denying the existence of adolescent sexuality while simultaneously providing sexual and reproductive health services to them.

The Caste and Religion Question

Among the 80% cases of POCSO that were filed by parents in the study by Enfold India, a significant number were cases where the adolescent couple was inter-caste or inter-religious. It is important to note that consensual relations between adolescents from compatible caste and religious backgrounds are often encouraged and solemnised into marriage by parents; while POCSO is invoked when the couple violates social boundaries. In this way, the age of consent law is weaponised to persecute some adolescent couples, regardless of the aim of protecting children from sexual exploitation. This entrenches the societal status quo, while policing young people's sexuality.

A close-age gap exemption could provide a leeway for young inter-caste and inter-religious couples to pursue consensual relationships without the threat of their families persecuting them on blanket legal grounds using POCSO.

The Internet Question

One reason cited by the LCI's 283rd report to keep the age of consent as 18, was the proliferation of internet access amongst young people, with its concurrent rise in instances of grooming, online child abuse and cyberbullying. The report noted that children are at high risk of exploitation, especially in the digital age.

While these risks are real, it is unwise to deny the sexual liberation and greater sexual awareness among adolescents – a by-product of the internet revolution in India. It is unrealistic to expect adolescents who have access to the internet to stay completely clear of all sexual content available on it. The more

sustainable course of action would be to empower and educate them about sexual and reproductive health, as well as navigating the internet safely.

A close-age gap exception would substantiate the point that not all instances of exploring sexuality by adolescents are exploitative. Moreover, it would account for cases of grooming, where a significantly older adult enters into an exploitative relationship with a minor. The very nomenclature of the close-age gap exception implies that it applies only when both parties are within a similar age range, and concomitantly, at a similar level of emotional maturity and sexual awareness. Having a cap of 3 years on the permissible close-age gap, as well as a minimum threshold age of 16 years for an adolescent to claim this exception, would exclude cases of older adults manipulating or coercing vulnerable adolescents into 'consenting' to a relationship without the adolescent possessing required information and awareness to give such a consent.

Legal Challenges

The Double Standard in the JJ and POCSO Acts

As per the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), an adolescent between the ages of 16 and 18 can be tried as an adult for committing 'heinous crimes', including rape. This means that for criminal justice purposes, the State has carved out an exception to treat adolescents as adults on a case-to-case basis, recognising their mental capacity to commit crimes. But, when it comes to the same adolescents' sexual agency, the law treats them as a homogenous group, denying their capacity to consent as "totally meaningless". This arbitrary classification refuses to recognise adolescents' evolving capacities to progressively exercise their rights, as laid down in the UNCRC (United Nations Committee on the Rights of the Child, 2013).

A close-age gap exemption would reconcile the JJ Act and the POCSO Act, in terms of following a case-by-case and individualised approach as to when adolescents should be treated as children in need of protection, and when they should be treated as young adults capable of making their own decisions.

Concerns of 'Revictimising the Victim'

The LCI's 283rd Report expressed concerns about a lower age of consent

resulting in greater emphasis being placed on the "victim's" conduct in a POCSO case, in order to guage genuine consent by minors. This "revictimisation of the victim" would cause them psychological distress. While this is a significant concern, in practice, cross-examination of the victim is a routine part of POCSO trials. In order to address the harm caused by insensitive investigations, the Supreme Court has issued comprehensive guidelines in multiple cases to ensure the survivor's well-being (Virender v. State, 2009; State of Karnataka v. Shivanna, 2014; Sakshi v. Union of India, 2004). Moreover, the POCSO Act itself mandates that the court create a "child-friendly atmosphere" for cross-examination of victims, with section 45(1) granting the Court punitive powers in case the prescribed procedure is not followed.

Therefore, a close-age gap exemption should not significantly increase psychological distress to the "victim" in a consensual relationship, especially when the majority of POCSO cases that are quashed by courts, are revealed as being consensual relations by the victim's own refusal to testify against her partner.

Conclusion

In light of the above examination of global jurisprudence and analysis of the Indian scenario, we argue that a close-age gap exemption should be introduced in the POCSO Act with a permissible age difference of 3 years, and a minimum age threshold of 16 years. This would be consistent with the age of consent that was followed in India until 2012, while the permissible age difference is an average of most global jurisdictions that have such provisions between 2-5 years. While this would not be a panacea for decriminalising consensual adolescent relationships, it would be a starting step towards establishing adolescent sexual agency.

The introduction of a close-age gap exception must necessarily be accompanied by compulsory, scientifically sound and socially relevant sex education for adolescents in school. This must include information about safe sexual practices, STIs/STDs and contraception, as well as information about government schemes for adolescent healthcare. Mental health counselling services respecting the confidentiality of the adolescent should also be introduced in schools, to provide an outlet for adolescents pursuing romantic and/or sexual relationships to seek help from adults without fearing consequences from

conservative families. Similar education and counselling programmes must also be conducted for adolescents who are out of school, in community health programmes and Anganwadi centres among other feasible locations.

Education should not be restricted to the adolescents themselves; medical practitioners and sexual-reproductive healthcare providers must undergo sensitisation to provide safe services to adolescents, without any preconceived social biases. The fear of legal repercussions arising out of the mandatory reporting provisions in the POCSO Act can be mitigated by providing an exception to the clause, to respect the anonymity of an adolescent over the age of 16 who explicitly asks for such anonymity when approaching a healthcare provider.

Ultimately, a close-age gap exception is envisioned to offer protection to inter-caste and inter-religious couples, reconcile contradictions in existing laws governing minors, provide a standpoint to discuss adolescent sexual and reproductive health and in the process, align Indian law further with the UNCRC principles.

Declaration of Interests

This paper is an extension of an assignment for an undergraduate course of the author(s). No potential conflict of interest was reported by the author(s).

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ADOPTED BUT NOT FORGOTTEN: LEGAL DELIBERATIONS ON DNA TESTING OF CHILDREN BORN 'IN RAPE CASES'

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Abstract

DNA testing has revolutionized the field of science, offering a potent tool for individual identification and resolving intricate legal issues. In particular, it has played a pivotal role in rape cases by providing vital evidence leading to the identification and conviction of perpetrators. Nevertheless, recent developments have witnessed accused individuals petitioning the Court to conduct DNA tests on children born due to rape to establish their innocence post their adoption. This paper scrutinizes the ethical and legal dimensions of such requests, considering factors such as the right to privacy, potential harm to the child's mental well-being, the enduring social stigma, the limited probative value of paternity in proving rape, and concerns about the reliability of DNA tests. The paper aims to furnish a comprehensive foundation for the ethical and legal argument against compelling innocent children to undergo DNA testing post-adoption solely at the behest of the accused despite their right to a fair trial.

Keywords: DNA testing, paternity, rape case, adoption, right to privacy

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Introduction

"Rape is not only a crime against an individual; it is a crime against the whole society." – Justice Sanjay (Kumar Singh Bhootnath v. State of UP, 2021)

"Section 63 of the Bharatiya Nyaya Sanhita, 2023" defines what rape is and prescribes punishment for the same. Despite multiple efforts by the State, the crime rate is not decreasing, as can be witnessed by the data provided in the latest report by the National Crime Records Bureau (NCRB Report, 2022).

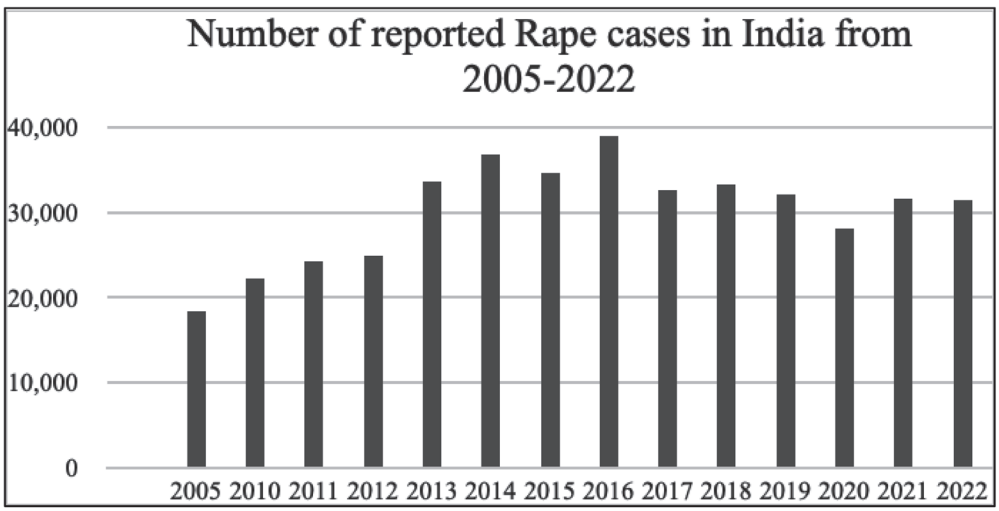

Chart 1: Number of Reported rape cases in India from 2005-2022

It is evident from the above chart that there is no significant decrease in the incidence of rape crimes in India. In 2005, the number of reported rape cases was 18,359, while in 2022, the number increased to 31,516 (NCRB Report, 2022).

In cases of rape, gathering evidence against the accused can be challenging, primarily due to the isolated nature of these incidents, which often lack witnesses. In many instances, aside from the statements of the prosecutrix, the sole evidence available is a DNA test that can confirm the occurrence of sexual intercourse. However, a significant obstacle arises when victims approach the court months or even years after the incident, as crucial DNA evidence may no longer be available.

If a woman becomes pregnant due to rape, DNA evidence can be

employed to establish paternity between the child and the accused. While there are no official statistics on the prevalence of pregnancy among rape victims in India, data from developed countries like the USA offers some insights. According to the American Journal of Obstetrics and Gynecology (AJOG), approximately 5% of rape cases result in pregnancy. (Holmes et al., 1996). However, there is a lack of subsequent information regarding the fate of children born from such heinous crimes. These children may either be aborted, put up for adoption, or raised by the victims themselves.

This paper centers on the DNA analysis of children born out of rape, examining its validity and implications, particularly post-adoption. It was inspired by a judgment by the Kerala High Court, where Justice K. Babu in "Suo Moto v State of Kerala (2023)" halted the collection of DNA from adopted children as evidence in rape trials by six lower courts. This article explores such DNA tests' legal, ethical, and scientific dimensions and whether their court-mandated use is justified. (Benny, 2023).

Legal Provisions Dealing with DNA as Evidence

As rape is an isolated event which lacks eyewitnesses, evidence becomes a crucial part of the prosecution. There are many evidences which are required in rape cases. These are the victim's clothes, drop sheet, sanitary napkin/tampons, fingernail scrapings, oral swab, head hair, saliva on the skin, semen on the skin, vaginal swab, endocervical swab, anal and rectal swab, victim DNA, etc. (Yadav, 2016). Despite so much evidence, the conviction rate in rape cases in India is just around 30% ("Hyderabad Case: How Effective Is India's Justice System in Dealing with Rape?," 2019).

In this paper, emphasis is placed on DNA of an adopted child as an evidence in rape cases. Though not directly dealing with DNA as evidence, the following statutes and provisions still touch upon it. There is, as such, no comprehensive law in India dealing with DNA:

- "Section 116 of Bharatiya Sakshya Adhiniyam, 2023": Birth During Marriage and Legitimacy - Though not directly linked to DNA evidence, Section 112 applies when DNA testing is employed to resolve matters of paternity and legitimacy.

- "Section 149 of Bharatiya Sakshya Adhiniyam, 2023": Inquiries During Cross-Examination - This section permits witnesses to be cross-examined on any fact that could impact their credibility, including matters related to DNA evidence if it proves relevant to the case.
- "Section 157 of the Bharatiya Sakshya Adhiniyam, 2023": Question by Party to his Witness permits a party involved in a proceeding to inquire about their witnesses regarding any prior statements they may have made, including those about DNA evidence.
- "Section 52 of Bharatiya Nagarik Suraksha Sanhita, 2023": - This section is pertinent as it allows the investigating authorities to seek the help of medical practitioners during investigations. This involves taking DNA from the accused for investigation purposes. However, as per Articles 20(3) and 21, obtaining consent from the accused is essential or will be held as void.

Ethical Considerations Surrounding DNA Tests on Children

The phrase "mankind owes to the child the best it has to give" given by the Geneva Declaration of Rights of the Child (1924) is a deep reminder of the obligations of society toward children, reminding everyone that their interests should always be put first. Ethically, children born through rape are often highly stigmatized because of the criminal status of their biological fathers. This stigma becomes a larger part of the community's narrative while referring to offender children as the "forgotten victims of crime," "orphans of justice," or even "hidden victims of incarceration." (Ye, 2023) Such nomenclature connotes a complete lack of regard and attention combined with a comparative lack of measures to address difficulties faced by offender children thereby contrasting sharply with the numerous works and support systems related to children affected by divorce in their parents' lives.

The neglect such children face is a perpetuation of a cycle of marginalization and prevents them from improving their social standing or well-being. When children are made to start a new life by being given for adoption, it is that the decision regarding such a choice has to be based on what best serves those children's best interests. Enabling DNA testing would resurrect those

connections with past trauma which might even not have any recollections for them or submit them to judgments from their societies against such a new beginning's very intent and hence should not be approved for ethically rightful reasons.

Informed Consent

In any forensic procedure, obtaining informed consent is an ethical imperative. However, ensuring that minor children fully comprehend the implications of DNA testing can be challenging, as they may not have the same level of agency or understanding as adults. In cases involving minors, legal guardians may need to provide consent, emphasizing the need to prioritize the child's best interests, especially in sensitive matters like rape.

Privacy and Autonomy

DNA testing involves analyzing and collecting an individual's material, which contains personal and sensitive information. Especially, Adopted children or children in orphanages have every right to privacy and autonomy over their data. This raises questions regarding who has the authority to consent on behalf of a minor for DNA testing and how we can protect the child's autonomy.

Potential Psychological Impact

DNA testing has the potential to unveil unexpected and possibly distressing information about parentage or familial relationships. It is critical to consider the psychological impact such revelations can have on adopted children, especially in cases involving rape. Throughout this process, it is vital to ensure that mental health support and counselling are readily available for the child.

Stigmatization

DNA testing can inadvertently lead to stigmatization or discrimination based on information. If test results reveal a connection with the accused, it may subject the child to additional social and psychological challenges, potentially affecting the child's maternal relationship. In cases where the child is given up for adoption, it's a well-established rule that adoptive parents are not provided

with the child's background or history. This can also have adverse effects on how adoptive parents perceive and relate to the child. The convict's children are always treated differently, they carry the stigma of having characteristics like violence, impulsive, and cruel behaviour and here the convicted person being a rapist makes it worse (Ye, 2023). Thus, considering these factors, DNA testing merely on the requests of the perpetrator is unethical.

Scientific Limitations of the DNA Test

The significance of DNA in rape trials cannot be overstated. Over the years, numerous reports have explored its applicability and scientific validity. According to a study conducted by Dipa Dube from IIT Kharagpur, DNA tests were relied upon by the Court to exonerate the accused in approximately 42% of cases. By analysing various such cases, they drew the following analogies:

> "Cases based on oral evidence, when coupled with the corroborative evidence in the form of DNA, help the Court to reach the definitive conclusion of the guilt of the accused. Cases based entirely on oral evidence and medical evidence but no DNA generates a 50% chance of the accused being convicted or acquitted. The reason is that the courts have to decipher the credibility of the victim and whether her testimony inspires confidence. Cases essentially based on circumstantial evidence greatly rely on DNA for decision-making. In cases of gang rapes, DNA is a crucial piece of evidence to establish the links of the accused to the crime in question. In cases where the offence has led to childbirth, DNA is significant to establish the paternity of the child and, thereby the links of the accused to the alleged crime in question. In rapes of minor girls (or statutory rapes), DNA is the single piece of evidence which can help to establish the violation of the victim by the accused, thereby establishing guilt, in the absence of the requirement of consent on her part." (Dube, 2014).

Using DNA evidence in cases has its limitations. DNA can confirm the absence of specific materials at a crime scene or on a victim. Still, it cannot

provide insights into the crime's specific circumstances, such as consent or intent. Therefore, while DNA evidence is a powerful tool, it may not always offer a comprehensive understanding of the events.

Another challenge is the potential unavailability or incompleteness of DNA evidence. Factors like the passage of time or evidence contamination can impact the quality and quantity of recovered DNA. In certain situations, a negative DNA test does not necessarily rule out the occurrence of a sexual assault. It's important to recognize that DNA tests are not infallible and may yield false negatives. Consequently, there could be cases where DNA testing fails to detect the presence of the perpetrator's genetic material, even when a rape has occurred.

Several factors can contribute to false negatives, including DNA concentration or degradation. Interpreting complex DNA profiles can also be challenging, and errors during analysis and interpretation can lead to incorrect conclusions. Furthermore, when there are mixtures of DNA from multiple contributors, it further complicates the interpretation process.

It is crucial to consider these limitations of DNA testing when evaluating whether it should be mandated for children, especially in sensitive cases involving rape. The fact that DNA testing may not always be entirely accurate underscores the importance of exercising caution and discretion when deciding whether to compel such tests through legal means on an innocent child.

Legal Considerations in Allowing DNA Test of the Child

The established legal doctrine is clear that courts cannot dictate how to investigate the investigating agency (Sujith v State of Kerala, 2013). Therefore, when an accused perpetrator applies to conduct a DNA test on a child who is born to rape victim and is been already given for adoption , the researchers propose that it should be carefully studied by the High Court, taking into consideration two pivotal aspects.

Firstly, the Court should assess how allowing this application may infringe upon a baby's fundamental right to privacy. This is a critical concern, particularly in cases involving sensitive matters like rape, where the privacy and well-being of all parties involved must be safeguarded.

Secondly, the Court should weigh the relevance of paternity in the context of the utterly separate question of rape. It is essential to recognize that establishing paternity does not directly address the issue of whether a rape occurred. However, the same may differ in "Protection of Children from Sexual Offences Act, 2012" (POCSO) as it lays down age of consent as 18. The age of consent is the age at which a person is considered legally capable of agreeing to marriage or sexual intercourse. So in these cases paternity itself is a sufficient proof of the crime.

The paper further emphasizes that current Adoptions Regulation 2022 has a sufficient mechanism to deal with such cases where DNA is very necessary without disturbing the Children's well being and the accused's fair trial.

Right To Privacy of the Child Born

In August 2017, the Supreme Court's Constitution bench, in the case of "K.S. Puttaswamy v Union of India (2017)," established that the right to privacy constitutes a fundamental right within the framework of Article 21 of the Constitution of India. This landmark case underscored that privacy is intrinsically linked to an individual, as it forms an integral component of the dignity inherent in human existence.

The pivotal question is whether children, like all other individuals, possess an inherent and fundamental right to privacy. In the year of 1989, the "Convention on the Rights of the Child" was introduced by the UN organization. Article 19 of this Convention safeguards children from all forms of violence, neglect, and abuse. Article 24(3) protects them from harmful traditional practices affecting their health, while Article 37 protects them from torture and 'cruel, inhuman, or degrading treatment'. Besides these provisions, a child's right to privacy comes into the picture, which encompasses the psychological and physiological well-being of the child. Any violation of these rights amounts to torture and cruelty. Degrading treatment to the child is prohibited and can never be justified under any law of the land. In case of any interference with the child's rights, we should ask whether interference is lawful and non-arbitrary. The Convention also recognizes parental rights in guiding and assisting their children's upbringing, as outlined in Article 5. Nevertheless, these parental

rights are subject to the condition that any interference with a child's bodily integrity must be supported by objective evidence showing that it benefits the child's health and development. Without such evidence, the interference cannot be justified.

Henceforth, a child's privacy concept may differ from an adult's. The Convention acknowledges the evolving capacity of children and their right to define their personal boundaries and identity. Article 8 of the Convention explicitly grants children the right to preserve their identity, including details of their parentage.

In the current scenario, a critical question arises: Can an innocent child be compelled to undergo a DNA test when, instead of serving the child's best interests, especially when it could potentially affect their future? If the test results indicate that the perpetrator is indeed the father, it could result in the child being treated differently by adopted parents. While times and attitudes may evolve, the enduring impact of growing up with the social taboo of being the child of a rape convict does not fade away. Societal stigma and the child's acceptance level within families and communities remain uncertain. (Ye, 2023). It is well-documented that survivors of sexual violence face significant stigma, and this stigma is believed to be even more pronounced when it comes to children born from such situations. "Regulation 48 of Adoption Regulations 2022" particularly provides for the confidentiality of records to be maintained of children adopted for the same reason.

Thus, when DNA testing of a child born to a rape victim has the potential to irreparably harm the child's future, subjecting them to societal prejudices and discrimination that can persist throughout their life should they be forced to go through the tests. The claims of the author have been recognised by the Kerala High Court in "Suo Moto v State of Kerala (2023)" which discussed how at times the adopted parents would not have divulged the fact of adoption to the child. The revelation could lead to an imbalance in the emotional status of the child.

In the current situation, it is imperative to acknowledge that an innocent child should not be coerced into undergoing a DNA test. This practice is not

only ethically questionable but also runs counter to their fundamental right to privacy and, most importantly, does not serve their best interests. Several courts of the nation have taken a similar stance when presented with the issue.

The recent ruling of the Allahabad High Court, drawing upon the Supreme Court's judgments in "Ashok Kumar and Inayath Ali," held that the child of the rape victim, in this case, is not a party in the ongoing criminal appeals. Furthermore, the child's status and paternity are not pertinent issues that need examination in these criminal appeals. The determination of the child's paternity is unnecessary in the context of these criminal appeals. Ordering a DNA test for the victim's baby child would infringe upon the infant's right to privacy, a constitutionally protected right, as affirmed by the Supreme Court in the case of "K.S. Puttaswamy v Union of India (2018)". Highlighting the legal precedents of Ashok Kumar and Inayath Ali, which the Chattisgarh court cited, is crucial despite the different issues in those cases (Dilesh Nishad and Ors v State of Chhattisgarh, 2019).

In "Ashok Kumar v Raj Gupta (2022)," a Coordinate Bench carefully examined the use of DNA fingerprint tests. This case revolved around a property ownership dispute, where the defendants disputed the plaintiff's legitimacy as the son of the original property owner. During this case, a request for a DNA test was made. The Coordinate Bench emphasized that DNA is unique to an individual (except for identical twins) and can disclose a person's identity, familial connections, and even sensitive health information. When considering whether someone can be compelled to provide a DNA sample in such circumstances, the Court referenced the proportionality test established in the landmark decision of "K.S. Puttaswamy (Aadhaar-5J.) v Union of India (2017)", which constitutionally protected the right to privacy in India. Consequently, the Court emphasized the importance of assessing whether the pursued objectives are proportionate, non-arbitrary, non-discriminatory, whether they might harm the individual, and whether they justify intruding upon the person's privacy and personal autonomy.

In the case of "Inayath Ali," when considering an application for a DNA test to establish infidelity, the Supreme Court made a significant ruling. It held

that it is unjustified and wrong to direct DNA sampling of children who were not parties to the proceedings, especially when their status was not necessary to be examined. Their Lordships further ruled that instructing an examination of a child's paternity would infringe upon the privacy rights of the individuals subjected to such tests and could be detrimental to the children's future (Inayath Ali v State of Telangana, 2022).

In the case of "Subash v State of Kerala (2018)," The Kerala High Court was presented with a petition by the accused person seeking permission to undergo a DNA test to establish his claimed innocence. The purpose of this request was to prove that he was not the child's biological father. The accused argued that the rape of the victim had resulted in the child's birth, making the child's paternity a relevant factor. The Court, however, held that in this particular case, the child had been given up for adoption, and the child's whereabouts were unknown. It was evident that the child was entitled to maintain anonymity and privacy. Both the child and the adoptive parent may not wish to be entangled in legal proceedings. Moreover, the issue of the child's right to privacy also came into question. Consequently, unilaterally ordering a DNA test against the child was deemed inappropriate. The Court firmly held that DNA tests might potentially violate the child's fundamental right to privacy. It is essential to respect the child's privacy rights in this matter.

In a recent case, "Aparna Ajinkya Firodia v Ajinkya Arun Firodia" (2023), the Supreme Court delivered a crucial verdict emphasizing the paramount importance of safeguarding the well-being of children. It highlighted that society owes its best to children and, in doing so, recognized that an innocent child should not be held victim to extreme stress, tension, or trauma only to know its paternity. The Court emphasized that a child's precious childhood and youth should not be sacrificed in a quest to determine paternity, especially in cases involving infidelity. As said by Honourable Justice B.V. Nagarathna "Children of today are citizens and the future of a nation. The confidence and happiness of a child who is showered with love and affection by both parents is totally distinct from that of a child who has no parents or has lost a parent and still worse, is that of a child whose paternity is in question without there being

any cogent reason for the same." The Court warned that the plight of a child whose paternity and legitimacy are disputed could lead to confusion, which could escalate if courts do not exercise discretion judiciously and responsibly.

Given the Supreme Court's cautious approach in cases involving infidelity where branding a child as illegitimate is a concern, the same rationale should apply to cases where a child may be branded as the son of a rape convict. Henceforth, the use of DNA tests should be avoided, and requests for the same to be conducted by the accused should not be allowed, as upheld by the High Courts of Chattisgarh and Kerala. In "Narayan Dutt Tiwari v. Rohit Shekhar (2012) 12 SCC 554", the Supreme Court, upholding the direction of the Delhi High Court, held that where a child himself approaches the Court in a personal application for a DNA test to establish paternity and there is a clear need for the same, the Court may pass a direction for the test. If need be, the direction can be enforced with the help of police and reasonable force.

Paternity is Not a Sufficient Proof of Rape

The accused in rape cases have frequently cited decisions of the Hon'ble Supreme Court, such as "Vijayan v State of Kerala (2008)," "Kaini Rajan v State of Kerala (2013)," and "Krishan Kumar Malik v State of Haryana (2011)". They argue that the lack of conducting a DNA test on the child born soon after birth is fatal to the prosecution's case and should lead to their acquittal. However, it's crucial to consider whether these Supreme Court judgments can be mechanically applied to all cases, particularly when the application of the ratio will lead to the violation of the newly recognized right to privacy in the Constitution. The Supreme Court's stance on this matter is yet to be definitively answered.

However, when establishing that the rape convict is not the biological father of the child born is generally insufficient to demonstrate their innocence in a rape case, then how can the non-conducting of DNA testing itself be regarded as evidence of accused's innocence?

Back in 2008, a single learned judge of the Kerala High Court in the case of "Sisu Bhavan v Joy Yohannan (2008)" took a progressive stance by

emphasizing the limited relevance of paternity in cases involving alleged rape offences. Furthermore, the learned judge asserted that by directing the petitioner institution to produce the child, the Sessions Court was effectively contravening the directions of the Apex Court in the Lakshmi Kant Pandey. The Apex Court's orders emphasized the absolute necessity of maintaining secrecy regarding the child's whereabouts when given in adoption, not only by the orphanage but also by all relevant parties involved. This confidentiality requirement is of paramount importance.

The Kerala High Court, further recently, in "Subhash v State of Kerala (2018)" held that allegations under Section 376 of the Indian Penal Code raised against the petitioner herein had no connection with the child's paternity. It was contended that, even if it is proved that he was not the child's biological father, that does not by itself disprove the allegation of rape which has to be independently evaluated. The victim is a rape survivor who cannot be burdened with the liability to undergo a DNA test (Gulafsa Begum v State of U.P, 2021).

In a similar case, the Allahabad High Court, in "Gulafsa Begum v State of UP (2021)" held that it did not have to consider the issue of determining the child's paternity. Instead, the central question in the case revolved around whether rape had been committed on the prosecutrix by the opposing party. In such a scenario, there was no valid reason for the prosecutor to subject her child to a DNA test. The Court emphasized that it is essential to note that the commission of offenses under Sections 376, 504, and 506 of the IPC cannot be ascertained through a DNA test, whether conducted with or without the consent of the prosecutrix.

In the case of "Anandamay Bag v State of West Bengal (2007)" the Calcutta High Court cited a decision of the Supreme Court in the case of "State of M.P. v Dayal Sahu (2005)" where it held that the non-examination of a doctor in a rape case is not always fatal to the prosecution's case, especially when the testimony of the prosecutrix is credible and inspires confidence in the Court. In such instances, the absence of a doctor's report does not undermine the case. The specific case before the High Court involved the rape of a 13-year-old girl. The High Court concluded that if the learned Trial Court deems the prosecutor's

evidence sufficient, conducting a DNA test is unnecessary. However, it is worth noting that at that time, the High Court remarked that the determination of the paternity of the child through a DNA test should be decided in a different forum and not in the case at hand. However, the Calcutta High Court, in the recent case of "Swapan Mondal v State (2021)" has held that paternity is not a relevant issue in that rape case. In this instance, the minor victim established the offense through other evidence. Therefore, her decision to decline a DNA test for the child born is not detrimental, and she is simply safeguarding her child's best interests as a mother.

This framework, therefore, is what courts should consider in cases where DNA evidence is considered essential: do its aspects serve justice fairly while protecting the welfare of the child and their adoptive family from undue disruption? This approach is more in agreement with the twin objective of fair disposition in the judicial process as well as ethical treatment of children within such cases

Paternity as Conclusive Evidence Under POCSO

The "Protection of Children from Sexual Offences (POCSO) Act" was enacted to bridge critical gaps within the legal structure for the safety and protection of children from sexual abuse and exploitation. It mainly serves two functions: enforcing the rights of all children to safety, security, and protection from such offenses and categorically defining those offenses while providing commensurate penalties as an effective deterrent as per the case of "Attorney General v Salrsi (2022)". The strict law neglects all technical requirements of consent for minors under 18 since they are not held accountable for giving valid consent. In that regard, the judgment of "Parhlad & Anr. v State of Haryana (2015)" of the Supreme Court sustains that consent has no legal relevance in the case of minors.

Data brings to the forefront the requirement for this kind of stringent legislation. NFHS-5 states that 6.8% of the women within the age bracket of 15-19 years were either mothers or pregnant when conducting the survey. These women stand vulnerable to being sexually assaulted or exploited. (Government

of India Ministry of Health and Family Welfare, 2021). Also, according to NCRB data, the offender was well-known to the victim in around 97% of cases dealt with under sections 4 and 6 of the POCSO Act.(National Crime Records Bureau, 2021). The trend is ominous and threatens to open doors to groomers, traffickers, and offenders getting an easy way out by exploiting a child's consideration of consent, which may give them immunity under the statute.

The age for sexual intercourse with consent has been set at 18 years through the POCSO Act, and if such a situation can be proved as below the set age, questions of consent can be set aside. The above principle has been reiterated in the case of "Ravi Virumandi v State and another (2022)", wherein the Madras High Court held that the POCSO Act does not attach any importance to the consent of a minor. The Court of law clarified that any sexual act performed against a child is covered by the law irrespective of claims made about consensual engagement.

Even when the female minor clearly states that it was consensual, the male counterpart is convicted under the provisions without compromise. (Age of Consent under the Protection of Children from Sexual Offences Act, 2012, 2023). While such cases bring out the strict application of the law, one should not fail to realize that in cases concerning child rape victims, consent becomes irrelevant, thereby making the DNA of a child born from such an act highly relevant.

Mandatory DNA Collection under Adoption Regulations 2022

However, even in such cases courts need to consider "Regulation 39 of the Adoption Regulations, 2022" in cases related to children born of non-consensual sexual relations and the applicability of DNA tests.

Regulation 39 clarifies that in cases where the biological mother willingly surrenders a child born from non-consensual sexual relations or in instances where cases under POCSO or BNS are registered, the Child Welfare Committee is obligated to complete the DNA sample collection process. This process must be conducted within the stipulated timeline before the child is declared legally free for adoption. The aim is to address the right of the accused to a fair trial without causing undue distress to the adoptive families.

It is judicially recognized, as in "ABC v State of Gujarat, (2024)" and "Gaya Prasad Pal v State (2016)" that DNA tests undertaken by the Child Welfare Committee before the giving of the children for adoption have acted as a landmark before the Court. These cases outline how such efforts may help prove such crucial facts and still keep the best interest of the child and their adopted families. This mandate was recently appreciated in the same context by Justice K. Babu in "Suo Moto v State of Kerala (2023)".

Conclusion

As a researcher, we propose that the Court should not allow DNA testing of the child at the request of a person accused of rape post-adoption. Even though a child cannot express their will, they have all the fundamental rights, especially the right to privacy and well-being that are available to normal human beings. The child is also eligible for the right to privacy to safeguard his interests. It should be kept in mind that the DNA test result alone could never prove or disprove the sinful act of the accused. Further, the DNA test's scientific and circumstantial limitations should be considered when making any decision.

However, it is not proposed that never a DNA test of the child should in no circumstances be allowed in rape cases. The courts should also consider certain exceptions, for instance, in cases like "Rajan K.C. v State of Kerala (2021)" where the victim of the rape case, i.e., the mother, had willingly consented to the blood sampling from herself and her child before adoption and mandate of collection under Regulation 39. In the case of abortion and the birth of a deceased child, the test may be allowed on the fetus with the consent of the victim's mother. This approach is consistent with the Supreme Court's reliance on DNA tests of the dead fetus in the case of "Kamalanantha v State of T.N. (2005)"

The principle proposed here is that the courts should not exercise discretion in the rest of the cases. After the prosecution has established the rape case accused beyond a reasonable doubt, it is upon the accused to disprove it. No such prayer of mandating DNA tests post-adoption should be entertained

as it interferes with the child's fundamental right to privacy and well-being. The principle proposed to protect the best interests of the child is particularly supported by two High Courts, Bombay High Court in "Surender Vijay Paswan v State of Maharashtra (2023)" and Kerala High Court in "Suo Moto v State of Kerala (2023)".

We conclude the protection of a child's fundamental rights, particularly their right to privacy and well-being, must remain paramount. Allowing post-adoption DNA testing compromises these rights and exposes the child to potential harm. While a fair trial is crucial, the mechanisms to achieve it must not come at the expense of the child's welfare. Narrowly tailored exceptions, supported by consent and necessity, should guide judicial discretion. This balanced approach ensures justice while reaffirming the inviolability of the child's dignity and best interests.

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