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## CRIMINALIZATION OF DISSENT AND FREE SPEECH IN INDIA: A LEGAL ANALYSIS

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### ABSTRACT

*The right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India forms the cornerstone of democratic governance. However, the increasing use of criminal laws such as sedition (Section 124A IPC / Section 152 BNS), the Unlawful Activities (Prevention) Act (UAPA), and other penal provisions has raised serious concerns regarding the criminalisation of dissent in India. This article critically examines the legal and constitutional framework governing free speech and its restrictions, focusing on the tension between state security and individual liberty. It analyses judicial interpretations in landmark cases such as Kedar Nath Singh v. State of Bihar and Balwant Singh v. State of Punjab, while evaluating recent trends of arrests and prosecutions against activists, journalists, and protestors. The study also explores the chilling effect created by vague and overbroad laws, and assesses whether current legal mechanisms conform to constitutional principles of proportionality and necessity. By comparing international standards and democratic norms, the paper argues for urgent legal reforms to safeguard dissent as an essential component of democracy.*

**KEYWORDS:** *Freedom of Speech and Expression, Constitution of India, Criminalisation of Dissent, Individual Liberty, Democracy and etc.*

### INTRODUCTION

In India the issue of orphaned and abandoned children is rooted in widespread poverty, disease, improper healthcare, and social issues leading to large proportion of children who have lost both parents and are abandoned by their parents. These children often face challenges like inadequate access to healthcare, housing, and education. According to UNICEF, around 25 million children in India are orphans. During COVID-19 pandemic, the number of orphans increased rapidly. It is thought there are only 20,000 couples registered to adopt a child in India, but according to the Indian Society of Assisted Reproduction, there are almost 28 million couples who are trying to

conceive, but are infertile. With an almost equal number of couples who want a child and children who need a home, which led people, think that adoption rates would be much higher, but due to complicated adoption process and skewed views of adoption, most children are left to fend for themselves? Most people want a child of their own within their own gene pool, and the majority couples exhaust every option before considering adoption. Even then, IVF fails, a lot of couples settle without children. What is more alarming is that more than 25 million children without a legal guardian or care, less than half a million were in institutionalized care. The rest are left wandering the streets, vulnerable to abuse and trafficking.

The sight of children on the streets on India is incredibly normalized, with most turning a blind eye to the problem. With so few children actually in care homes, most orphans are not ‘available’ for legal adoption. Even then prospective parents are fairly picky, with most wanting a child without a disability and between the age of 0-2 years old. This narrows down the pool of orphans considerably, especially the orphans who are teenagers are not adopted by parents anyway. There are several threats faced by orphans in India, especially for those who live on the street. One of the biggest risks is exploitation it is believed that eight million children aged between 5-14 years are forced in child labour, but the true figure is girls are often sold off as child brides, with 27% of girls in India being married before the age of 18 years. Boys don’t fare better with many being sold to extremist groups and being forced to fight as child soldiers, orphaned children living on the streets have the protection of the law, but in practice they have no physical protection from danger. Around 140 million orphan children are thought to exist in the world, orphanage children are socially vulnerable group that is frequently disregarded by the society at large.

Lack of parental attention and support causes developmental and behavioral issues in children living in orphanages the mental health issues influence the orphan’s overall development, which could have a negative effect on their academic and social outcome. Numerous health issues among orphans are caused by physical neglect, poor hygiene, and lack of nurturing they are also at higher risk of higher malnutrition, leading to increased mortality and morbidity rates compared to children living with their parents. Research shows that 78% of people had multiple morbid itie slow awareness of disease and their complications and a high prevalence of self-care for many health issues, most orphaned children suffer from varying degree of malnutrition with adolescent in residential care being particularly vulnerable and need of proper care. Nowadays orphans are also experiencing psychological problems such as anxiety, depression, loneliness, and social isolation the daily increase in orphan is accompanied by severe violations of their basic human rights, including emotional deprivation, financial challenges, and a sense of desperation. Research is needed on parentally bereaved children to better understand their specific needs and challenges this can inform interventions and support systems to improve their mental well-being. It is concerning to hear that orphan children have lower psychological well-being scores

compared to non-orphan children. Hence the state is empowered to make laws to ensure that orphanages in the country are well-maintained and receive adequate funding to protect the rights of orphaned children and legal procedures need to be followed in adopting such children as it ensures the safety and security of children.

## **OVERVIEW OF THE TERM ORPHANED AND ABANDONED CHILDREN**

As per **section 2(42) of Juvenile Justice Act, 2015** an orphan means a child who is without biological or adoptive parents or legal guardian or whose legal guardian is not willing to take or capable of taking care of the child.

## **CHALLENGES FACED BY THE VULNERABLE CHILDREN OF INDIA**

**Economic Hardships and Lack of basic necessities-** One of the most pressing issues faced by orphaned children in India is economic hardship and lack of access to necessities of life. Many orphanages and childcare institutions struggle to provide adequate food, shelter, education, and healthcare services due to limited resources and funding constraints. According to report by UNICEF nearly 20% of orphanages in India lack access to safe drinking water, while 30% do not have proper sanitation facilities this miserable living situation exacerbate the vulnerability of orphaned children exposing them to malnutrition, illness, and poor quality of life acts as a hindrance in their growth and development.

**Emotional Trauma and Social Stigma-** In addition to the above issue, the orphaned children also suffer with profound emotional trauma and social stigmatization. The loss of parents and the abandonment by them can have a lasting psychological effect on children leading to feelings of loneliness, low self-esteem, trust issues. According to a study published in the Indian Journal of Psychiatry, orphaned children are at increased risk of mental health issues like depression, anxiety, post-traumatic stress disorder as compared to the children who live with their families. Moreover, they also face social stigma due to their orphan status which further isolates them from the mainstream society.

**Educational barriers-** Access to quality education is essential for the holistic development and prospects of the orphaned children. However, many orphanages and childcare institutions struggle to provide adequate educational opportunities due to resource constraints and poor infrastructure. According to a data from the Ministry of Human Resource development, approximately 40% of orphaned children in India are not enrolled in school, depriving them of essential knowledge and skills needed to break the cycle of poverty and build a better future. Moreover, those who do not attend school often face challenges such as inadequate academic

support, lack of educational materials, and discrimination from teachers, but some government initiatives have been taken to address these issues.

Healthcare Needs and Vulnerabilities-Orphaned children in India also face significant healthcare needs and vulnerabilities including lack of access to essential medical services and preventive care. According to the data from the Ministry of Health and Family Welfare, orphaned children are most likely to experience health problems such as malnutrition, infectious diseases and mental health disorders compared to children with intact families. Additionally, many orphanages and childcare institutions struggle to provide adequate healthcare services due to limited resource and funding, and undertrained medical staff due to malnutrition the children would suffer from poor eyesight, stunted muscle and bone growth, impaired mental development etc.

Rigid and Complex Adoption process- The adoption process in India is excessively bureaucratic and time-consuming. Data from Central Adoption Rescue Authority indicates that over 30,000 prospective parents are currently waiting to adopt, while only 2,131 children are legally free for adoption. Moreover, around two-thirds of these children have special needs, and it takes an average of three years for the adoption process to be completed. Illegal and unregulated practices in the adoption process leads to baby-trafficking and child-selling. Returning children after adoption have also been a significant as in 2020, CARA reported that over 1,100 children adopted across the country have been returned by their adoptive parents to the child care institutions in the last 5 years.

## **INTERNATIONAL LAWS AND CONVENTIONS**

Not only in India but the issues related to the orphaned and abandoned children are also dealt at the global level thus many conventions came into being to tackle this problem. The significant conventions are United Nations Convention on the Rights of Child which was adopted in 1989 and is most widely ratified human rights treaty in history its main objective is to establish and legally bind countries to protect and promote the fundamental rights of every child regardless of their race, religion or abilities ensuring they have the right to survival, protection and development and also monitors how countries are implementing the convention, including reporting to the UN committee on the Rights of the child, and further highlights the responsibilities of the governments to safeguard children's well-being. Another important convention is Hague Convention on the Protection of Children which was adopted in 1993 and establishes minimum standards for the rights of children in inter-country adoption, its main objective is to protect children from the harmful effects of international parental child abduction and protects the children from the risks of illegal adoptions abroad, further enables cross-border

cooperation between authorities. Lastly, another important convention is European Convention on the Adoption of Children which was adopted in 1967 it was prepared within the framework of Council of Europe and its main purpose was to establish a set of legal standards to ensure that all child adoptions within Europe are conducted in the best interest of the child and outlines specific legal requirements for adoption, including thorough investigations, parental consent, and court oversight.

### **POTENTIAL SOLUTIONS IN COMBATING THE ISSUES OR PROFOUND CHALLENGES FACED BY THE ORPHANED AND ABANDONED CHILDREN**

- a. Strengthening child protection systems-** The overall purpose of a Child Protection System is to promote the well-being of children through prevention of violence and exploitation and taking actions to prevent further abuse if it does occur. Instead of treating each child safety concern separately they consider the full range of actors involved in protecting the children's rights. One-Stop Centre are central contact points for children and their families affected by violence here, the survivors can find psycho-social support, a police office to initiate criminal investigation as well as medical treatment including collection of forensic evidence under one roof and legal help is also the part of the centre. Some examples of child protection laws in India are Juvenile Justice (Care and Protection) Act, (2000); Prohibition of Child Marriage Act (2006); Protection of Children from Sexual Offences Act (2012); Child Labour (Prohibition and Regulation) Act (1986).
- b. Improving access to quality education and healthcare-** It can be improved by government funding and resource allocation, investing in teacher training and healthcare worker development, implementing targeted programs for marginalized communities, promoting preventative healthcare, utilizing technology to bridge gaps, and advocating for policy changes that prioritises equity and accessibility. By reducing barriers to schooling by providing free or affordable tuition, transportation assistance, and flexible learning options for disadvantaged groups and leveraging online learning platforms and digital tools to reach students in remote locations and enhance learning experiences. Utilisation of telemedicine services so the patients in rural areas can also connect with medical specialists.
- c. Community awareness campaigns-** The awareness campaigns for orphans can help change attitudes and build support for these children. These campaigns includes workshops, seminars, and information campaigns these seminars educate the community on issues related to orphans and not only this the orphaned children can also share their stories and experiences in the different orphanages and how they have been deprived of

many privileges in their life and did not get the opportunities they deserved this would break the social stigma of their orphan status in the society at large and lure many parents to consider the option of adoption rather than ignoring it. However, the information campaigns distribute flyers, brochures or posters to raise awareness and also encourage many philanthropists to donate in the orphanages with poor living conditions.

- d. Foster Care System-**It means temporary arrangement for children who need care; it's different from adoption which is permanent. It provides care and protection to the children who are above the age of six and cannot be with their biological parents, these children come from families experiencing temporary crises such as death or separation of parents, financial hardship, parental incarceration, terminal illness, the need to migrate in search of work, or similar reasons that impair the parents' ability to care for and raise the child. Foster care was first incorporated in India's Juvenile Justice System through Juvenile Justice (Care and Protection of Children) Act, (2000), and underwent significant changes with the re-enactment of the JJ Act in 2015. The operational and administrative procedures for foster care, first issued by the central government in 2016, and later revised in 2024. In foster care the legal relationship between the child and their biological family remains intact, and the child does not gain inheritance rights from the foster family. Previously, the application process for foster care varied from state to state, for example- some states such as Rajasthan sought offline applications through DCPU while others, like Maharashtra had both online and offline system but now the application procedure is introduced through centralized online application process. Foster care outcomes are improved by assessment of the child's suitability for foster care, assessment of foster parents, preparation and expectation setting, post-placement support, and family strengthening etc.

### **CHILD ADOPTION IN INDIA- AN EMERGING ISSUE**

The concept of child adoption in India is known since time immemorial however it is a fact that the home is the best place for a child to grow in atmosphere of love and affection and with maternal security. In fact, there could be emotional, physical, intellectual, and psychological development of the child is possible, the child having no parents due to desertion, divorce, and death, as such adoption is the best form of rehabilitating the child in a family instead of keeping such child under Institutional Care services. Adoption therefore is defined as 'the act by which the relation of paternity and affiliation is legally established between persons not so related of paternity and affiliation is legally established between persons not so related by nature.' Child adoption in India is governed by two primary laws: the Hindu Adoption and Maintenance Act, 1956 and the Juvenile Justice Act, the Central Adoption Resource Authority is the central body

responsible for monitoring and regulating intra-country and inter-country adoptions. In January 2023, the Bombay High Court issued a directive that caused confusion in the adoption process, it instructed the state government not to transfer pending adoption proceedings to District Magistrates, as mandated by the JJ Amendment Act, 2021. This raised concerns about the potential hindrance to progress in resolving adoption cases however, there have been positive developments as well the Adoption Regulations, 2022 introduced by the Ministry of Women and Child Development, aimed to streamline the adoption process. District Magistrates and Child Welfare Committees were instructed to upload adoption orders and case status in real time since the implementation of these regulations, 2,297 adoption orders have been issued by DMs nationwide, making significant progress in resolving pending cases.

The complex adoption process can be tackled by many ways that is firstly, by strengthening adoption laws which means India needs to review and update adoption laws to streamline the process, making it more transparent and efficient this could involve simplifying paperwork, reducing delays, and addressing any ambiguities or loopholes in the existing legislation. Secondly, comprehensive post-adoption support services should be established to assist both adoptive parents and adopted children these services might include counselling, educational support, access to healthcare, and guidance for managing challenges that may arise during the adoption journey. Lastly, promoting awareness about adoption as a viable option for building families is crucial this includes educating the public about the benefits, procedures, and legal aspects of adoption, its essential to encourage positive attitudes towards adoption and misconceptions or stigma associated with it.

### **GOVERNMENT INITIATIVES AND SCHEMES**

Several Ministries and Departments of the government of India are implementing various schemes and programmers for the benefit of children. Some of the schemes and programmers are Integrated Child Development Services being implemented by Ministry of Women and Child Development is the world's largest programmer aimed at enhancing the health, nutrition and learning opportunities of infants, young children (0-6 years) and their mothers. This scheme provides an integrated approach for converging basic services though community-based workers and helpers, it is a centrally sponsored scheme implemented through the State Governments with 100% financial assistance from the Central Government for all inputs other than supplementary nutrition which the states were to provide from their own resources.

Mid-Day meal scheme is also one of the important schemes of the government to aim universal enrolment and retention of children under the programmed nutrition snacks are provided to children attending schools; Integrated programmer for Street Children this programmer is

implemented by the Ministry of Social Justice and Empowerment and it aims at preventing destitution of children and facilitate their withdrawal from life on streets. This programmer is targeted towards children without homes and family ties, especially vulnerable to abuse and exploitation; Kasturba Gandhi Balika Vidyalaya is a new scheme being implemented by the Department of Education which enables opening of 750 special residential schools for the girl child belonging to SC/ST, other backward classes and minority in educationally backward blocks having low female literacy; Sarva Shiksha Abhiyan being implemented by the Department of Education provides for school infrastructure and quality improvement in education of the children. Under this Abhiyan the National Flagship programmer, the government aims to provide free and compulsory elementary education to all children in the age group of 6-14 by 2010.

## CONCLUSION

From the above discussions, I conclude that the legal challenges in handling orphaned and abandoned children stem from issues related to child protection, guardianship, adoption, and international law. Many legal systems struggle to ensure proper care while balancing children's best interests, cultural factors, and parental rights stronger legal frameworks, international cooperation, and improved enforcement mechanisms are necessary to ensure these children receive the stability, protection, and opportunities they deserve. This paper highlights the delicate balance between ensuring the child's safety, the protection of parental rights, and the complexities of adoption and custody laws. Legal systems must adapt to safeguard children's rights while providing clear and efficient pathways to permanent care, ideally prioritizing the child's best interests in all decisions. These challenges underscore the need for legal reforms and more efficient systems that prioritize the well-being of the child. The government has taken some measures to improve the foster care system and the community awareness campaigns to improve the living conditions of the orphanages.

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