

## Legal Issues in Child and Adolescent Psychiatry

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### Abstract

*According to the census 2011, total percentage of children in India is about 39% of total population, out of which 6.46% of children suffer with childhood psychiatric problems. Such problems in children existed from early period, but currently due to increased awareness, the rate of cases being reported at child and adolescent psychiatry clinics has tremendously increased. Child and adolescent psychiatry is an emerging field, which demands a multi-disciplinary team in managing childhood developmental problems, such as emotional and behavioral disturbances, child abuse etc. As incidences of child sexual abuse, trafficking, and child labor are increasing drastically, it requires an immediate attention by a strong legal system to safeguard victimized children. There are some minor legal responsibilities involved in other childhood problems too, about which every professional involved in child care should be aware of. Current article gives a glimpse of legal issues involved in child and adolescent psychiatry.*

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### INTRODUCTION

According to the census 2011, total percentage of children in India is about 39% of total population. Out of this, 6.46% of children suffer with childhood psychiatric problems. Among these, many children suffer with emotional and behavioral disturbances, which are highly preventable conditions. This population is highly vulnerable as they are totally dependent on their care providers. While treating these children, it requires a multi-disciplinary approach i.e. involvement of care providers, school teachers, psychiatrist, psychiatric nurse, psychologist, psychiatric social workers, child welfare agencies, advocates and legal systems for protection of child. The important role of these all disciplines is to promote child's health, prevent health problems, early diagnosis and treatment of the cases and rehabilitation of disabled. In all countries and in India, there are many

laws and acts related to children, which safeguard them. While providing care to children with these issues, all health care professionals should be aware about the basic legal issues involved. Legal means something which is relating to the law or permitted by law and a legal issue is defined by law and is determined whether it is right or wrong? Before we learn about the legal system and their functioning, we must be aware about what are the rights of these children.

### RIGHTS OF CHILDREN

Human rights are thus fundamental and are considered natural to all human beings. "Rights" are things every child should have or be able to do. All children have the same rights. These rights are listed in the UN convention on the Rights of the Child. Almost every country has agreed to these rights. All the rights are connected to each other, and all are equally important.

Sometimes, we have to think about rights in terms of what the best is for children in a situation, and what is critical to life and protection from harm<sup>[1]</sup>. Children of all ages have the same rights as adults under the Human Rights Act 1998<sup>[2]</sup>. Any person who subjects the mentally ill child to cruelty or denies the child of his/her basic rights can be summoned to court and face stringent punishment. Being the child's advocate, all mental health nurses need to be aware of this.

UNICEF has described these children's rights in a very simplest way, which every child can understand. It is stated in Article 1-54<sup>[3]</sup>.

It states that,

1. Everyone under 18 has these rights.
2. No matter who they are, where they live, what their parents do, what language they speak, what their religion is, whether they are a boy or girl, what their culture is, whether they have a disability, whether they are rich or poor.
3. No child should be treated unfairly on any basis.
4. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children.
5. The government has a responsibility to make sure about children rights are protected. They must help children's family to protect their rights and create an environment where child can grow and reach his potential.
6. Child's family has the responsibility to help him learn to exercise his rights, and to ensure that his rights are protected.
7. Children have the right to be alive.
8. Children have the right to a name, and this should be officially recognized by the government. Children have the right to a nationality (to belong to a country).
9. Children have the right to an identity: an official record of who they are. No one should take this away from them.
10. Children have the right to live with their parent(s), unless it is bad for them. Child has the right to live with a family who cares for them.
11. If child lives in a different country than his parents do, she/he has the right to be together in the same place.
12. Children have the right to be protected from kidnapping.
13. Child has the right to give his opinion, and for adults to listen and take it seriously. Child has right to find out things and share what S/he thinks with others, by talking, drawing, writing or in any other way unless it harms or offends other people.
14. Child has right to choose his/her own religion and beliefs. Their parents should help them decide what is right and wrong, and what is best for them.
15. Child has the right to choose his/her own friends and join or set up groups, as long as it isn't harmful to others.
16. Children have the right to privacy.
17. Children have the right to get information that is important for their well-being, from radio, newspaper, books, computers and other sources. Adults should make sure that the information children are getting is not harmful, and help them find and understand the information they need.
18. Children have the right to be raised by their parent(s) if possible.
19. Children have the right to be protected from being hurt and mistreated, in body or mind.
20. Children have the right to special care and help if they cannot live with their parents.
21. Children have the right to care and protection if they are adopted or in foster care.
22. Children have the right to special protection and help if they are a refugee (if they have been forced to leave their home and live in another country), as well as all the rights in this convention.

23. Children have the right to special education and care if they have a disability, as well as all the rights in this convention, so that they can live a full life.
24. Children have the right to the best health care possible, safe water to drink, nutritious food, a clean and safe environment, and information to help them stay well.
25. If children live in care or in other situations away from home, they have the right to have these living arrangements looked at regularly to see if they are the most appropriate.
26. Children have the right to help from the government if they are poor or in need.
27. Children have the right to food, clothing, a safe place to live and to have their basic needs met.
28. Children have the right to a good quality education. They should be encouraged to go to school to the highest level they can.
29. Children education should help them use and develop their talents and abilities. It should also help them learn to live peacefully, protect the environment and respect other people.
30. Children have the right to practice their own culture, language and religion or anything they choose. Minority and indigenous groups need special protection of this right.
31. Children have the right to play and rest.
32. Children have the right to protection from work that harms them, and is bad for their health and education. If they work, they have the right to be safe and paid fairly.
33. Children have the right to protection from harmful drugs and from the drug trade.
34. Children have the right to be free from sexual abuse.
35. No one is allowed to kidnap or sell children.
36. Children have the right to protection from any kind of exploitation (being taken advantage of).
37. No one is allowed to punish children in a cruel or harmful way.
38. Children have the right to protection and freedom from war. Children under 15 cannot be forced to go into the army or take part in war.
39. Children have the right to help if they have been hurt, neglected or badly treated.
40. Children have the right to legal help and fair treatment in the justice system that respects your rights.
41. If the laws of their country provide better protection of children rights than the articles in this convention, those laws should apply.
42. Children have the right to know their rights! Adults should know about these rights and help them learn about them, too.
43. Children should know how governments and international organizations like UNICEF will work to ensure children are protected with their rights <sup>[4]</sup>.

### CHILD WELFARE

The original mission of the child welfare system was to provide custodial care for children and youth who were abandoned or abused by their families. This mission was initially met through the operation or support of orphanages in years past, and foster homes and group homes in later years. However, in recent years there has been greater recognition that children in the child welfare system have extremely high mental health needs, yet are significantly underserved with respect to mental health services. To cater these needs, Governmental and non-governmental agencies are working based on the law to safeguard this population <sup>[5]</sup>.

## LEGAL ISSUES INVOLVED IN CHILD AND ADOLESCENT PSYCHIATRY

Various rules, regulations and laws are set to ensure children's rights and safeguard them from any harms, it is mentioned under different headings below:

### Constitutional Provisions

Constitution of India gives emphasis on rights of every child along with few important points stated in different articles, as mentioned below:

#### Article 14

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

#### Article 21A

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.

### Right against Exploitation

#### Article 23 (1)

Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

#### Article 24

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

#### Article 39(e)

Health and strength of workers, men and women, and the children of tender age are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; **39(f)** Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected

against exploitation and against moral and material abandonment.

#### Article 45

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

Provision for early childhood care and education to children below the age of six years: The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

#### Article 54 (k)

A person who is a parent or guardian should provide opportunities for education to his child or ward, as the case may be, between the age of six and fourteen years.

### The Guardian and Wards Act (1890)

This act deals with the legal procedures related to the appointment and declaration of guardians. All the procedures are conducted by court to safeguard the child and his property. It describes the conditions for selection of guardians, duties, responsibilities, accountability, and limitations of guardian in handling child and his properties' custody. In case of any mishap during the implementation of court order, further steps to be followed are described in detail in Guardian and Wards Act.

### NATIONAL POLICY FOR CHILDREN

Various policies are implemented by Government of India for welfare of children such as The National Policy for Children, 2013; National Policy for Children, 1974; National Policy on Education, 1986; National Policy on Child Labour, 1987; National Nutrition Policy, 1993; National Health Policy, 2002; National Charter for Children, 2003;

National Plan of Action, 2005; Child Rights in the Five Year Plans.

The National Policy for Children 1974 is the first policy document concerning the needs and rights of children. It is a very brief document that does not come close to covering the mass number of issues faced by children in India. It recognizes children to be a supremely important asset to the country. The goal of the policy is to take the next step in ensuring the constitutional provisions for children and the UN declaration of rights are implemented. It outlines services, the state should provide for the complete development of a child, before and after birth and throughout a child's period of growth.

Some of the aims are as follows: children to have comprehensive health and nutrition programs. Children should have free and compulsory education until the age of fourteen. Education should include physical education, and recreational time. Special attention needs to be given to children from marginalized backgrounds or children with social handicaps. Children should be protected from abuse, neglect, cruelty and exploitation. Existing laws need to be amended to take into account so that the best interest of the child is always first priority<sup>[6-7]</sup>.

### **Young Persons (Harmful Publications) Act (1956)**

It is an act to prevent the dissemination of certain publications harmful to young persons. "Harmful publication" means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly- ("http://indiankanoon.org/doc/767057/" "http://indiankanoon.org/doc/767057/") the commission of offences; or (ii) acts of violence or cruelty; or (iii) incidents of a

repulsive or horrible nature; in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever; Such offence is punishable under this Act and shall be cognizable. Approved Government officers (Police, magistrate) have power to seize and destroy harmful publications and penalty is imposed for sale, etc., of harmful publications.

### **The Probation of Offenders Act (1958)**

In this act, there are restrictions on imprisonment of offenders under twenty-one years of age and pays special attention to the circumstances of the case, the nature of the offence and the character of the offender. Under this act court has power to release certain offenders after admonition, on probation of good conduct, require released offenders to pay compensation and costs.

### **Indian Child Welfare Act - ICWA (1978)**

The Indian Child Welfare Act (ICWA) is a federal law that seeks to keep American Indian children with American Indian families. This was done in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. ICWA gives tribal governments a strong voice concerning child custody proceedings that involve Indian children, by allocating tribes exclusive jurisdiction over the case when the child resides on, or is domiciled on, the reservation, or when the child is a ward of the tribe<sup>[7]</sup>.

### **The Narcotics and Psychotropic Substances Act (1985)**

Children are vulnerable and can fall prey to drug peddlers easily. In this millennium, addiction to cannabis, cocaine, opium, etc. seems to occur at a



very tender age. In this context, this act is very important. If any person produces, possess, transports, imports, exports, sells, purchases or uses any narcotic drugs or psychotropic substance s/he can be punished rigorously<sup>[8]</sup>.

### **Immoral Traffic (Prevention) Act–PITA (1986)**

The Immoral Traffic (Prevention) Act or PITA is a 1986 amendment of legislation passed in 1956 as a result of the signing by India of the United Nations declaration in 1950 in New York for the suppression of immoral traffic in persons and the exploitation of the prostitution of others. In 1956 India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). PITA only discusses trafficking in relation to prostitution and not in relation to other purposes of trafficking such as domestic work, child labor, organ harvesting, etc. It gives an outline of the provisions in this law that pertains to children below the age of 18<sup>[9]</sup>.

### **Individuals with Disabilities Education Act (1990)**

According to the Individuals with Disabilities Education Act (IDEA), if a child has a disability that affects his or her educational performance, then the child may be eligible for special services. IDEA includes 13 categories of disabilities that are protected under the law. So the question of eligibility under IDEA depends on two things: whether the child has a disability that fits in one of IDEA's 13 categories and whether that disability affects how the child does in school<sup>[10]</sup>.

### **Juvenile Justice Act (2000)**

The Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of children in the

purview of the juvenile justice system. This Act has been further amended in 2006 and 2010<sup>[11]</sup>.

### **National Commission for Protection of Child Rights (NCPCR) (2007)**

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's mandate is to ensure that all laws, policies, programs, and administrative mechanisms are in consonance with the child rights perspective as enshrined in the constitution of India and also the UN convention on the rights of the child<sup>[12]</sup>.

### **The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) (2009)**

It is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. The RTE Act provides for the right of children to free and compulsory education till completion of elementary education in a neighborhood school. Physical punishment and mental harassment is prohibited. Emphasis is on making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age<sup>[13]</sup>.

### **Proposed Integrated Programme for Child Services**

As per the 2001 census, there were 427 million children in the country. There are millions of children living in the difficult circumstances. The child protection

programme in India is shared between various ministries, which have been implementing the schemes and programs to reach out to varied groups of vulnerable children with complex and diverse needs. The important schemes and programs for such children include Programme for Juvenile Justice, Integrated Programme for Street Children, Shishu Grih Scheme, Scheme for Working Children in Need of Care and Protection, General Grant-in-Aid Scheme, CHILDLINE Service, Rajiv Gandhi National crèche scheme for the children of working mothers, Pilot Project to Combat the Trafficking of women and Children for Commercial Sexual Exploitation in Destination Areas, etc. The “Integrated Child Protection Scheme” is an outcome of integrating existing child protection schemes.

### **Protection of Children from Sexual Offences (POCSO) Act (2012)**

This Act provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. This is the first time that an Act has listed aspects of touch as well as non-touch behavior (e.g.: photographing a child in an obscene manner) under the ambit of sexual offences. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. This act includes processes such as medical examination, reporting of cases as well as ensuring care and protection of the child. If the mental health nurse has reasonable grounds to suspect that a child has been abused or is at risk of being abused, s/he must report it to the Children's Aid Society. Abuse includes physical, sexual and emotional abuse, as well as a pattern of neglect. This duty should never be delegated to others. One does not have to see the child or suspect/know who the abuser is<sup>[14]</sup>.

### **Mental Health Act (1987)**

This act had a special provision for admission of minors by the parents/guardians as well as for establishing separate hospitals for those below 16 years of age<sup>[15]</sup>.

### **The Mental Health Care Bill (2013)**

There are specific provisions for admission of minors in Chapter XII. A revolutionary change is highlighted in Chapter VI i.e. De-criminalizing of suicide as against Section 309 of the Indian Penal Code by linking the act of suicide to the state of mental health of the person attempting the act. Chapter XII states that electro-convulsive therapy is banned for minors and in case deemed necessary, may be done with the consent of the guardian and the concerned board. However, minors cannot make advance directives<sup>[16]</sup>.

### **The Right of Persons with Disabilities Bill (2014)**

The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. Instead of seven disabilities specified in the Act, the Bill covers 19 conditions. Persons with at least 40% of a disability are entitled to certain benefits such as reservations in education and employment, preference in government schemes, etc. The Bill confers several rights and entitlements to disabled persons. These include disabled friendly access to all public buildings, hospitals, modes of transport, polling stations, etc. In case of mentally ill persons, district courts may award two types of guardianship.

A limited guardian takes decisions jointly with the mentally ill person. A plenary guardian takes decisions on behalf of the mentally ill person, without consulting him. Violation of any provision of the Act is punishable with imprisonment up to six months, and/or fine of Rs. 10,000.

Subsequent violations carry a higher penalty<sup>[17]</sup>.

### ***Informed Assent***

In case of participation in research, informed consent from parents/guardians is sufficient for minors less than 7 years of age. Children aged 7-12 years have to submit an informed child assent form while those aged 13-17 years have to submit an informed youth assent form. An informed assent form does not replace a consent form signed by parents or guardians. The child assent form must be brief and contain extremely simplistic language written at the appropriate age level.

### **CONCLUSION**

All health professionals constantly faced with the challenge of making difficult decisions regarding right and wrong. Complex situations frequently arise in caring for children with mental illness. Everyone who is involved in caring these children held to the highest level of legal and ethical accountability in their professional practice. Hence, professionals working with children who have mental health problems need to keep updating their knowledge about changes that take place in legislation that affects these children.

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