



## **Constitutional framework of legal rights, legislative enactments and judicial approach towards safeguarding the rights of child in India**

**Vijay M Gawas**

Assistant Professor-cum-Assistant Director, UGC Centre for the Study of Social Exclusion and Inclusive Policy,  
Goa University, Taleigao Plateau, Goa, India

### **Abstract**

The present paper makes a modest attempt to analyze the provisions of the Constitutional framework of Legal Rights and the Legislative enactment of the child Right. It is fact a humble attempt to scrutinize the provision from the angle of social, economic, healthy Environment, and Educational which as beneficial to the Child Right.

The paper has outlined the provision of Constitutional Rights and, other acts related to the Child Right. The present paper makes efforts to bring into the notice that state are really fulfill the Constitutional commitment for availing the safeguard and welfare measure of Children's.

In fact, this research paper deals with the constitution law, and other major legislations that were enacted for safeguarding the rights of the Child Right. For this purpose, the secondary data from books, articles, journal, newspaper etc. have been used.

**Keywords:** constitutional law, judicial approach, legislative enactment, status

### **1. Introduction**

The Developed countries like Indian having the largest population number of child Population in the world. According to report the Indian have more than 375 million children, which as constitute around 40% of the child population. Out of these 69% of India children are victim of physical, emotional, or sexual abuse <sup>[1]</sup>. The world highest child Labour in India and most of the children are living under worse condition which is based on denial, neglected, exploitative and abusive environment. They are not having any opportunity to enjoy the healthy and happy life.

The main root of cause of child labour due to poverty, family pressure, migration, carelessness of parents, and other social ill etc. further, the basic deprivation are lack of adequate shelter, food, basic Education etc. There are large number of Children are found in disadvantage condition i:e Homeless Children, Migrant Children, street Child, Children who are psychically and mentally Challenge, Child labour, Child beggar, Child in prostitution, Child sexual abuse, Children affected /infected by HIV/AIDS etc....

Most of Children are suffering from hunger due to poverty; inadequate Shelter and deprivation of basic needs such as health facilities, basic education, proper living condition and safe environment. The basic needs are the prime needs of every child which as guaranteed under the Constitution law of India. The living Condition of children's is so worst and they are directly or indirectly engaged in activities such as child labour, pick picketing, prostitution, begging etc. which as result of violation of child rights.

The Constitutional framework adopted the inclusive policy for

Welfare and protects the rights towards the children. Similarly, the parliamentary provisions also have to ensure the preserving dignity of each and every child, and also enforced some important legislative acts for provides protection of children. The duties of state to improved policies and much needed to protect the rights of children's.

Besides, the Notion of Constitutional rights has some important privileges to protect and deal justice to children. There are number of issue which has been identified the problems of children i.e. Child labour, abuse and infringement of constitutional rights one of the critical concerns for Children in the country.

The Constitution of Indian has specified the several provisions which as assures to every Citizen including children are free from exploitation, and protect their rights. It ensure by state with under obligation of constitutional Norms to protect from the violation of child Rights.

### **2. Constitutional beneficial provision for children**

The constitution of India is the supreme law of land, and also the social document of the country. The framers of the Indian constitution were influenced by the concept of Human Rights contained in the Universal Declaration of Human Right. The Constitution of India has had a number of articles spelled out the rights of Children; especially specified in part III of the fundamental Rights, and part IV of the Directive principles of State Policy.

The Constitution of India provides Right to equally to its entire Citizen including child right. The preamble of the Constitution of India seeks to secure to its entire Citizens; including the child right, a right of justice-social economic and political; liberty of thoughts, expression, belief, faith and worship; equality of status and opportunity; and to promote

<sup>1</sup> Neha Gupta, N.K. Aggarwal, 2012, Child abuse, published in Delhi Psychiatry Journal Vol. 15 No.2

among them all. And fraternity, assuring the dignity of the individual and the unity and integrity of the nation <sup>[2]</sup>. Similarly, the fundamental rights are given equally to every citizen of India which was specified in the part-III of the Indian constitution. But all these rights and privilege are also applicable to all the persons as well as children. Although, there was no specific mention of such persons appears either in the preamble or part –III of the Constitution.

The framer of the Indian constitution was also aware about the problems of the depressed class of society including with a children. It also ensured that social, economic, equality and justice also required; and thereby the constitutional provision should be made for the children. Under the Constitution there are certain rights applicable to children namely; Article 5 of the constitution which stated that every person born in the territory of India is a citizen of India. This provision is also applicable to children being the citizens are entitled to protection. However, the state also has empowered to make special provision for Women and children <sup>[3]</sup>.

The right life and personal liberty guaranteed under Article 21 of the Constitution which is applicable to every person including the child. The Education plays an important role for shaping the future of India. The Constitution of India inserted a new article 21A which provides for the Right to Education and it stated that, states shall provide free and Compulsory Education to all Children at the age of six to fourteen years in such manner as the state may, by law, determine <sup>[4]</sup>. The Right to Education is fundamental Right which has been incorporated in the constitution of India under article 21-A. It's mandatory to provide free and compulsory Education for all children at the age of six to fourteen years. The object of the article to abolished the illiteracy in the country and make them every educate every child. But unfortunate, the due to poverty the majority of children are prefer to go for work rather than to go to school.

However, the provision also seeks to protect the person from being forced to provide labour or service against own desire. It also prohibits traffic in human beings and beggar and other similar forms forced labour <sup>[5]</sup>. Under this article “it impose a positive obligation on the state to take step to abolished evil of trafficking in human being and beggar and other similar forms of forced labour <sup>[6]</sup>.”

Article 24 of Indian constitution is also applicable to provide protection to the children, and it also stated that “No child below the age of 14 years shall be employed to work in any factory or mine or to be engaged in any other hazardous employment” <sup>[7]</sup>. Even a private contractor acting for the Government cannot engage children below 14 years of age in such employment. The constitutional provisions and other various legislative enactment passed by many states which prohibit employment of children, child labour are still

prevails. The issue of child labour is a big problem in India. In pursuant to the said article 24, there are various enactment like Mine Act, 1952; The Merchant Shipping Act, 1958; The Motors Transport Workers Act, 1951; The Plantation Labour Act, 1951; The Bedi and Cigar Workers (Condition of Employment ) Act, 1961 prohibiting employment of children below certain age come into the statute Book.

The Indian Constitution Provide under Article 32(1) that “the right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this part is guaranteed” <sup>[8]</sup> and it also applicable to every child. Every children who on attainments of 18 years of age becomes eligible for inclusion of his name in the general electoral roll for the territorial constituency to which he belongs.

Similarly, Article 29 ensures the rights of minorities for protection of their interest and the right to education is available to all the citizens including the children. Article 29(2) of the Constitution provides that “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on the ground of religion, race, caste or language <sup>[9]</sup>.”

Generally, the fundamental rights are not only specifically mention to the children, but it also pertains to the socially, economically and educationally backward class of people. The fundamental rights give more emphasis on political equality and social justice. There are some social and economic rights listed as Directive Principles of state Policy also applicable to protection the interest of children. It is the Directive Principles of State Policy, which become more relevant while bringing about social and economic equality and justice which should be the main concern of the State and the society when it comes to doing something for the welfare and rehabilitation of the children. Moreover, the Directive principles of State Policy can be used as guidelines by the government from time to time for welfare of vulnerable groups or weaker section of the Society.

There are some of the Directive Principles of State Policy which pertain to guiding spirit for the amelioration of the conditions of the children. Article 37 ensures that the government has the flexibility to undertake appropriate legislative and administrative measures to ensure child rights. The most important article 39 clauses (e) and (f) are also applicable to children. However, article 39 clauses (e) deal “that the health and strength of workers, men and women, and the tender age of children are not abused and that Citizen are not forced by economic necessity to enter avocations unsuited to their age or strength” <sup>[10]</sup>. Similarly, it also stated in article 39 clauses (f) “that 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 <sup>[11]</sup>.”

Every State shall, within the limits of its economic capacity and development, make effective provisions for securing the

<sup>2</sup> J. N. Pandey, *Constituted Law of India*, Central Law Agency, 44<sup>th</sup> Edition 2007, Allahabad, at 29.

<sup>3</sup> Article 15(3)

<sup>4</sup> 86<sup>th</sup> Amendment Act, 2002

<sup>5</sup> Article 23.

<sup>6</sup> J. N. Pandey, (2003), *Constituted Law of India*, Central Law Agency, Allahabad, p.299

<sup>7</sup> P.M. Bakshi, *The Constitution of India*, 13<sup>th</sup> Edition 2016, universal Law Publishing, Haryana India, p.83

<sup>8</sup> *Ibid* 7 at 91

<sup>9</sup> P.M. Bakshi, *The Constitution of India*, 14<sup>th</sup> Edition 2017, universal Law Publishing, Haryana India, p.98

<sup>10</sup> *Ibid* 8at 112

<sup>11</sup> *Ibid*

right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want under Article 41 of the Constitution<sup>[12]</sup>. However, the constitution obligates state to make provisions for securing just and human condition of work besides some maternity benefits. It envisages a healthy psychological environment particularly when the child required a normal upbringing.

Article 45 requires the states to endeavour to provide early childhood care and education for all children below the age of six years<sup>[13]</sup>. However, “the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation”<sup>14</sup>. Article 47 of the constitution imposes on the Government a primary duty of the state to raise the level of nutrition and the standard of living of its people including children and to improve the public health<sup>[15]</sup>.

Article 51-A which provide who is parent or guardian to provide opportunities for education to his child or as the case be, ward between the age of six and fourteen years. “Article 243G read with scheduled 11 provide for institutionalization of child care by seeking to entrust programmes of women and child development to panchayat (item 25 of Scheduled 11), apart from education (item 17), family welfare (item 25), health and sanitation (item 23), and other items with bearing on the welfare of children”<sup>[16]</sup>.

### Judicial approach towards safeguarding the child’s right in India

The judiciary play an important role for protecting the interest of children’s and also given some pioneering judgment for promoting children’s Rights. The judiciary also show the positive attitude towards the protection of the rights of children’s in the issue of hazardous employment, the Supreme Court held that below the age of 14 years cannot be employed in any hazardous industry, mines or other works and has laid down exhaustive guideline how the state authorities should protect economic, Social and humanitarian rights of millions of children<sup>[17]</sup>. However, the Supreme Court also clarified that employment of children Act, 1938 was not applicable in case of employment of children in the Construction of Work of Asiad Projects in Delhi since Construction Industry was not a process specified in the schedule to the Children Act. The court held it prohibited under article 24 of the constitution that no child below the age of 14 years can be employed in the construction work even if Construction industry is not specified in the schedule to the employment of Children Act, 1938. Further, the court held that the right of the child were under protection even in the absence of the legislation<sup>[18]</sup>. In another case the Court was observed that right to life includes

the right to live with human dignity and all that goes along with it. The child labourers are firstly children and then labourers. As such they should not treated cruelty and inhumanly<sup>[19]</sup>.

The court also show he positive attitude towards the issue of Trafficking and sexual abuse of children. The Supreme Court directed that children of prostitutes should receive an empathetic response from the state and society threat would give them equal opportunity to dignity, care, protection and rehabilitation<sup>[20]</sup>. The laws are required to prevent he child sexual abuse which was brought to the attention of the Supreme Court and it was held that expression sexual intercourse as contained in section 375 of the Indian penal code should include all forms of penetration as the restrictive interpretation of penetration as existing in section 375 defeated the very purpose and intent of the provision for punishment for rape under section 376 of the IPC. The IPC, the Indian Evidence Act and the criminal procedure code should be accordingly amended<sup>[21]</sup>. It pursuant to the order passed by the Supreme Court and the Law commission of India reviewed the laws related to child sexual abuse and recommended amendments to Indian penal code in its report 172. The Supreme Court issued the direction to the state government for eradicating child prostitution and setting up rehabilitation homes a for those children<sup>[22]</sup>.

Another landmark judgement, which classic example of legislative reforms on the issues concerning juvenile, abandoned child and their rehabilitation and re-integration in the society. In this case the apex court had suggested that instead of each state having its own children’s act, different in procedure and content<sup>[23]</sup>. The Supreme Court also held that access to education is necessary for enjoyment of other fundamental rights contained in article 19<sup>[24]</sup>.

### Other Indian law protected of child right

The Indian penal code has specified the some offence against children, in order the child who commits a crime under the age of seven years no infant can be guilty of a crime<sup>[25]</sup>. Similarly, “a child who is between the ages of seven years and under twelve and he has not attained sufficient maturity of understanding to the Judge of the nature and consequences of his/her conduct is also considered incapable of committing a crime<sup>[26]</sup>.”

Apart from the Indian panel code also discusses the offence of foeticide and infanticides, in case a “person commit an act done with the intention of preventing the child form being born alive or an act that result in the death of the child after birth is made punishable offence”<sup>[27]</sup>. However, the person who knowingly likely to be cause the death of quick unborn child by act amounting of culpable homicide<sup>[28]</sup>. In certain

<sup>12</sup> Ibid 11 at 115

<sup>13</sup> Substituted by the 86<sup>th</sup> Constitution Amendment Act, 2002.

<sup>14</sup> Ibid 12at 118

<sup>15</sup> Ibid

<sup>16</sup> See, <https://blog.ipleaders.in/prevention-of-child-labour/> dated 10<sup>th</sup> November 2018

<sup>17</sup> M.C. Mehta v.Union of India,AIR1997SC699

<sup>18</sup> Peoples Union for Democratci Rights v.Union of India, AIR 1982sc1473

<sup>19</sup> Frabcis Coralis Mullin v.Adminstartion, Union Territory of Delhi,SC1981

<sup>20</sup> Gaurave jain v.Union of India, AIR1997SC3021

<sup>21</sup> Sakshi v.Union of India and others,AIR1999 (8)SCC591

<sup>22</sup> Vishal jeet v.Union of Inida,AIR1990SC1412

<sup>23</sup> Sheela Barse v.Union of India,Air1986 SC1773

<sup>24</sup> J.P. Unikrishnan v.state of Andhra Pradesh,AIR 1993 SC 2178

<sup>25</sup> Section 82, IPC

<sup>26</sup> Section 83, IPC

<sup>27</sup> Section 315,IPC

<sup>28</sup> Section 316,IPC

case, the parent committed crime against children, if their mother or father exposure and abandonment of such child under age of twelve years <sup>[29]</sup> but this section is prevent the parent for abandonment or desertion by his or her children of tender age of years.

The main purpose for Kidnapping of child's were sexually exploitation including for prostitution or the production of sexually abusive image, beggar, etc. In order, the Indian panel code discusses about the kidnapping and abduction. Kidnapping from Indian is defined as the conveyance of person beyond the borders of India without their consent <sup>[30]</sup>, and in case if a male minor of not yet sixteen years and a female minor of not yet eighteen years is taken from their lawful guardians without their consent it is termed kidnapping for lawful guardianship <sup>[31]</sup>. Besides, the abduction is defined as compelling, forcing or deceitfully inducing a person from a place <sup>[32]</sup> and maximum of cases kidnapping of minor for the purpose of begging <sup>[33]</sup>. However, it also an offence for procuration of minor girls under age of eighteen from one part of India to another <sup>[34]</sup> or import girls from foreign country below the age of twenty one years for purpose of prostitution <sup>[35]</sup>.

Apart from the kidnapping or abducting of "child under the age of ten years with the intention of taking dishonestly any movable property from the person of such child" <sup>[36]</sup>. When a minor under the tender age is sold or hire for prostitution purpose <sup>[37]</sup>, and obtained the possession of minor for purpose of prostitution etc <sup>[38]</sup>.

### Central and state Legislative Enactment

India has passed various laws to protect the rights and interests of the children in order to fulfil the Constitutional Provisions pertaining them. These include:

1. The Immoral Traffic (prevention) Act, 1956:- In 1986 the Government of India amended the erstwhile "suppression of Immoral Traffic in women and Girls Act 1956, Renames as the Immoral" <sup>[39]</sup> Traffic (prevention) Act to widen the scope of the law to cover both the sex exploitation in sexually for commercial purpose and provided enhanced penalties for offence involving children and minors.
2. The Child Marriage Restraints Act 1929:-This act was amended in 1979 is an act to restrain the solemnization of child Marriage. As per this act, the minimum age for prescribe 21 year for male and 18 years for females for marriage and this law was applicable to all of India. The act provides for punishment for solemnizing a child marriage. It also provide for punishment to parent or guardian, if they marry off their children/ wards before the permissible age.

<sup>29</sup> Section 317,IPC

<sup>30</sup> Section 360,IPC

<sup>31</sup> Section 361,IPC

<sup>32</sup> Section 362,IPC

<sup>33</sup> Section 363A,IPC

<sup>34</sup> Section 366A,IPC

<sup>35</sup> Section 366B,IPC

<sup>36</sup> Section 369,IPC

<sup>37</sup> Section 372,IPC

<sup>38</sup> Section 373,IPC

<sup>39</sup> See, <https://www.google.co.in/search?q=suppression+of+Immoral+Traffic+in+women+and+Girls+Act1956> dated 12<sup>th</sup> November 2018

3. National Policy for Children in 1974. The main object of this Policy for child welfare, child rights protection and child development in India. It intended to ensure effective services for children in the areas of education, health, nutrition and recreation with special emphasis on the weaker sections of society.
4. The child Labour (prohibition and Regulation) Act, 1986:- The act was enacted in 1986 by the parliament to prohibitions the engagement of children in certain employment and to regulate the condition of work of children in certain other employment. However, it was brought into force by the central Government in 1993 and according to this act, provides for power to the state Government to make rules with reference to health and safety wherever the employment of children is permitted.
5. The Goa Children's Act, 2003:-This act to provide for the children protection, maintenance, welfare training, education and rehabilitation of Neglected or delinquent children. It protects, promotes and preserves the best interest of children in Goa.
6. National Charter for Children (2003): in this charter it recognizes the survival, life and liberty of all children <sup>[40]</sup>.
7. "The Right of Children to free and compulsory Education Act, 2009;-This act to provide for free and compulsory education to all children at the age six to fourteen years" <sup>[41]</sup>. This act is in pursuant to article 45 of the Directive principles of state policy and article 21A as inserted by the constitution 86<sup>th</sup> Amendment act 2002.
8. National Plan of Action for Children (2005) was mainly responsible for a comprehensive study of child abuse and initiation of the amendment of law on child marriage.
9. National Commissions for Protection of Child Rights Act (2006) were formulated and established with a view to protect the interest of children in India.
10. Prohibition of Child Marriage Bill (2006) enhanced the punishment for those who were involved in child abuse and child marriage activities.

### 5. Statues of Child Rights in Goa

The Sex Ratio for Child (0-6) the figure for stood at 940 girls per 1000 boys. Thus the total children (0-6 age) living in urban areas of Goa were 90,597 and Constituted 9.99% of total urban population. Similarly, the average sex ration of child (0-6) in Rural areas in Goa was 945 girls per 1000 boys. The share of children aged 6-10 years attending school of Goa feel gradually from 94.3% in 1993 to 89% in 2001. Besides the share of children aged 11-14 years attending school for Goa fell gradually from 92.7% in 1993 to 91.8% in 2001. Goa number of literates aged 7 years and above was 1.17 million in 2011, up by 18.26% from 2001 <sup>[42]</sup>.

Child Right is one of the most important issues in the present contemporary society, and the main cause of the child abuse due to the alcoholism, drugs addiction and Socio-economic

<sup>40</sup> See, [http://childlineindia.org.in/CP-CR-Downloads/national\\_charter.pdf](http://childlineindia.org.in/CP-CR-Downloads/national_charter.pdf) dated 13th November 2018

<sup>41</sup> [https://en.wikipedia.org/wiki/Right\\_of\\_Children\\_to\\_Free\\_and\\_Compulsory\\_Education\\_Act,\\_2009](https://en.wikipedia.org/wiki/Right_of_Children_to_Free_and_Compulsory_Education_Act,_2009), dated 15<sup>th</sup> November 2018

<sup>42</sup> See, [https://www.ucanews.com/story-archive/?post\\_name=/2007/01/25/goan-priests-find-many-child-abuse-cases-happen-in-the-home&post,dated](https://www.ucanews.com/story-archive/?post_name=/2007/01/25/goan-priests-find-many-child-abuse-cases-happen-in-the-home&post,dated) 20<sup>th</sup> November 2018.

conditions. The first secular NGO conducted survey of child right in Goa in the year of 2005 and found that 9% of them reported being abused and 45 % of the cases are sexual abuse”<sup>[43]</sup>. The state was enacted “the first Goa Children’s Act, 2003 and also setup children’s court, base on the report of child abuse cases. Since the court was setup, the state has registered total 140 cases including 132 involve sexual abuse”<sup>[44]</sup>. A child abused and sexual abuse cases among teenagers were highest in the state. 707 cases of child abuses between April 2014 and March 2017, out of the 707 cases of child abuse reported cases around 289 were boys and 418 girls. With 183 cases, sexual abuse was the highest, 162 physical abuse cases, 134 kidnapping and 228 other cases<sup>[45]</sup>. Usually school children who fall victim to physical abuse and most often are involved teachers and family members.

Total “324 cases of the child abuse were reported out of 86 cases are physical abuse, 80 sexual abuse and 71 kidnapping cases. Looking at the above cases, these types of crime take place in poor and depressed classes groups, and most of the victim children belong to the poor category”<sup>[46]</sup>.

Between 2017 to 2018 the growth of crime rate against children was very high. The “total 273 child abuse cases rise in state and out of these 68% were girls, and 32% boys. The crime of child abuse around 51 % at the age group of the victim is between 0-15 years<sup>[47]</sup>. The Constitutional law of India and other acts must be located within the context of modern child rights to advocacy. Every person should be treated with equality and human dignity without any discrimination, which was specified under the constitutional law of Indian and international human rights.

## 6. Suggestion and Conclusion

Today, the thousands of children are victims of sexual abuse, Neglected and exploitation in India. The duties of the states to oblige of constitutional norms regard to provide protection of children’s, because the majority of children can lead a better quality of life in the society. However, the Constitution of India are also ensures the equality, freedom, justice and dignity of all individuals including children.

The commission for the protection of child Rights Act, 2005 was enacted by the Parliament for the protection of the rights of children in the Country. The purpose of National Commission for Protection of Child Rights was set up by to Government of Indian to protect, promote and defend Child Rights in the Country. Every Governments body need to provide speedy trial of offences against violation of child Rights. It also required special attention to girl Childs to provide a protection against exploitation and abuse in the society. In keeping of view, it needs Special programmes for with children’s to developed for education, employment and providing of other rehabilitation services. However, the state

should take an initiative for prevention of exploitation and abuse. It also needs to organize the various Programmes for prevention exploitation and abuse against the children in the society.

Another important thing that it needs special attention to children with disabilities is the most vulnerable group. The states should strive to ensure right to development as well as recognition of special need and of care, protection and security for children with disabilities. It ensure that right to development with dignity and equality creating an enabling environment and also Organized the special health vocational training along with specialized rehabilitation services Children with disabilities. It provides additional expenditure for facilitating activities of daily living, medical care, transportation, assistive devices Children with disabilities. Sometime disabled Child’s families and care givers are not afforded to give the better treatment to them. The state Government as well as Central Government also encouraged developing a comprehensive social security policy for Children with disabilities.

Besides, the NGO’s has played a very important role to provide affordable services to complement the endeavors of the Government as well as the provisions of services for Children. The states also have a very important role to formulation policy, planning, implementation, monitoring and also seeking their advice on various issues relating to children. Every state should strive to improve the quality of life of children.

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<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> See, <https://timesofindia.indiatimes.com/city/goa/every-second-day-a-child-is-abused-in-go-a-report/article-show/58918011.cms> dated 21<sup>th</sup> November 2018.

<sup>46</sup> See, [https://www.goaprism.com/child-abuse-rate-is-highest-in-the-state-of-go-a-report/#\\_W\\_Z-Eoczbcs](https://www.goaprism.com/child-abuse-rate-is-highest-in-the-state-of-go-a-report/#_W_Z-Eoczbcs) dated 23<sup>th</sup> November 2018

<sup>47</sup> See <https://www.itsgoa.com/child-abuse-common-go-a/dated> 24<sup>th</sup> November 2018.

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28. <https://www.itsgoa.com/child-abuse-common-goadated> 27<sup>th</sup> November 2018
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