

PROTECTION OF CHILDREN'S HUMAN RIGHTS IN INDIA: AN OVERVIEW

Dr. Prodip Das

Assistant Professor & HOD, Department of Education

Hiralal Mazumdar Memorial College for Women, Dakshineswar, Kolkata- 700035

ABSTRACT

Children and childhood across the world have broadly been construed in terms of a 'golden age' that is synonymous with innocence, freedom, joy, play and the like. It is the time when, spared the rigours of adult life, one hardly shoulders any kind of responsibility or obligations. But, then, it is also true that children are vulnerable, especially when they are very young. In the history of human rights, the rights of children are the most ratified. The United Nations Convention on the Rights of the Child (UNCRC) defines *Child Rights* as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 regardless of race, national origin, colour, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics. These rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UN General Assembly adopted the Convention on the Rights of the Child which is the first international treaty that defines the basic rights of the children. A Safe Childhood is a human right. They are recruited into armed forces. They are subjected to the death penalty, are disappeared, are punished by cruel and inhuman methods and suffer many other forms of violence. The aim of this study is to critically evaluate how effectively the violation of child right can be prevented and the needed directions can be provided to the parents and Government about their responsibilities to guarantee the rights of the child and also to reduce the vulnerability of children in harmful situations.

Keywords : Children, Rights, Constitution of India

INTRODUCTION

The term 'human rights' is defined as (The Protection of Human Right Act -1993 in Sec 2 (d)) "the means, the rights relating to life, liberty, equality, and dignity of individual guaranteed by the constitution or embodied in the international covenants and enforced by courts in India. Nature has

provided some inherent rights to every human being including children. These fundamental rights bestowed in human being from the very inception. Human being is endowed with rights since the stage of foetus. Foetus in the mother womb is the starting point; since then human being is guaranteed certain basic rights. These rights are intrinsic in every one. State cannot give or nullify these rights, which are inherent. State has to recognize and guarantee these rights. Canada played a key role in the negotiations that led to the adoption of the United Nations Convention on the Rights of Child in 1989. The United Nations has designated November 20 as Universal Children's day.

Even with the advent of human rights era, the needs of children were not specifically addressed and they continue to be vulnerable to various forms of exploitation, both in domestic and social spheres. Children have been working at home and outside; their working hours have not been limited and their wages have not been tendered. Although child abuse is a heinous social evil for years, till recently the societies have not allowed open discussion of the problem. Children have become mere commodities and child trafficking and exploitation are the growing global trends. Child pornography ranks the third most lucrative business in the world after drugs and arms, involving millions of children.

Poverty and economic instability deny the fundamental needs of nutrition and education to millions of children. Children who are thrown out to the street because of many reasons like extreme poverty, illegitimacy, neglect, disability fall victims of social evils of drug addiction, mafia-forced begging etc.

OBJECTIVE:

The objectives of this paper are enunciated below:

- To discuss about the issues of child protection in India.
- To about the issues related to the child rights and human rights.
- To discuss on the responsibilities of parents and Government regarding child rights.

METHODOLOGY

The methodology of this paper is descriptive and analytical. The required information is collected from different secondary sources like books, magazines, research articles and Google search.

Who a Child is?

A child is an individual who is not yet an adult. In the 1959 Declaration, it is asserted that the child by reason of his physical and mental immaturity needs special safeguards and care, including

appropriate legal protection, before as well as after birth. The issue of childhood thus becomes crucial as the international community recognizes that childhood begins from the moment of conception. Again this raises the question whether the child's 'inherent right to life' is enjoyable from the moment of conception. States hold conflicting views in this regard; the international community does not preclude any state's discretion to provide under a definition of its municipal law at what time the childhood begins. That is why the 1989 Convention provides only this much that a child means every human being below the age of eighteen years unless under the law applicable to him majority is attained earlier.

Various Rights of the Children

According to the United Nations Convention on the Rights of the Children – that India ratified in 1992 – all children are born with fundamental rights.

- ***Right to Survival*** – to life, health, nutrition, name, nationality
- ***Right to Development*** – to education, care, leisure, recreation, cultural activities
- ***Right to Protection*** – from exploitation, abuse, neglect
- ***Right to Participation*** – to expression, information, thought, religion

And a right to achieve these dreams. Even though India's children account for more than one-third of its population, their interests have never been given priority and their rights have been violated every single day.

CONSTITUTIONAL PROVISIONS REGARDING RIGHTS OF CHILDREN

The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

Part III:

Article 14 : Citizens of India, including children, must be treated equally before law and must be given equal protection by the law without any discrimination or arbitrariness.

Article 15(3) : Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.

Article 21 : No person shall be deprived of his life or personal liberty without due process of law. A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.

Article 21A : The State shall provide free and compulsory education to all the children falling in the age group of six to fourteen years in such manner as the State may, by law, determine.

Article 23: Prohibits trafficking in human beings and beggar or any other form of forced labour.

Article 24: Prohibits employment of children under the age of fourteen years in a factory, mine or in any other hazardous employment.

Part IV :

Article 39 (e): The state shall strive to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39 (f): The state shall ensure children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It must also be ensured that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41: The state is obliged to, within its economic capacity and development, secure provisions for educational opportunities and facilities.

Article 44: The state shall make all possible efforts to secure a Uniform Civil Code for all the citizens, thereby implying a uniform code for the adoption of children.

Article 45: The state shall endeavor to provide free and compulsory education to children until they attain the age of fourteen years.

Article 46: It is the duty of the state to promote the educational and economic interests of weaker sections of the society with special care and therefore, the children therein.

Article 47: The state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children.

Article 51 (c): International laws and treaties shall be respected by the state to every possible extent, including the CRC and its optional protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.

Article 51 A (k): It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Article 243 G provides for the institutionalization of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of Schedule 11).

HUMAN RIGHT OF CHILD CONTAINS IN ARTICLE 21 OF INDIAN CONSTITUTION

Equality before law and equal protection of laws are acknowledged as the most essential column of human rights of the universe of freedom that is where ever freedom to assert human rights is recognized, under Indian Constitution. India is the main democracy in the world, a sovereign, socialist, secular democratic and republic with a inclusive charter of rights written into its constitution.

It is true that Art. 21 is worded in negative terms but it is now well settled that Art. 21 has both negative and affirmative dimension. 'Positive rights are very well conferred under Art. 21 of the Constitution. The following rights are held to be covered under Art. 21:

- Right to live with human dignity.
- Right to livelihood.
- No compulsion to wife to live with her husband whom she hates.
- Right to shelter.
- Right to privacy.
- Right to privacy available to a woman of easy virtues.
- Right to privacy not an absolute right.
- Virginity Test violates Right to privacy under Article 21.
- Right to privacy and surveillance.
- Divorce Petition: Husband tapping conversation of his wife with others seeking to produce in Court, violates her right to privacy under Article 21.
- Telephone-Tapping: an Invasion on Right to privacy.
- Personal liberty includes right of women to produce child or refuse to participate in sexual act.

- Denial of permission to detente to get his book published.
- Right to health and Medical Assistance.
- Right to sleep.
- Arrest and detention of a judgment debtor.
- Bonded labour system.
- Right to members of protective homes.
- Right to die—Not a fundamental Right under Art. 21
- Right to get pollution free water and air.
- Protection of Ecology and Environmental Pollution.
- Mining in Aravalli hills range banned.
- Noise Pollution: Article 21 includes freedom from Noise.
- In the name of Urban Development Environment cannot be destroyed.
- Disposal of hazardous and toxic substance.
- Right to education.
- Right to Imams to emoluments.
- Abuse of children in circus.
- Second FIR for the offence committed in the same transaction – unconstitutional.
- Second FIR for the offence committed in the same transaction – unconstitutional.
- Anticipatory bail— Denial
- Prisoner's right under Article 21.
- Right to free legal aid.
- Free Legal Aid—Availability both at trial and appellate stage.
- Right against solitary confinement.
- Right to Fair Trial.

- Right to speedy trial.
- Speedy Justice—Delay violates Article 21.
- Speedy Trial—No outer limit can be fixed for speedy trial.
- Mere lapse of several years since the commencement of prosecution does not justify the discontinuance of prosecution or dismissal of indictment.
- Speedy Trial and fair Trial—A qualitative difference.
- Precedence of trial for an offence under an Act in preference to the Trial of other offence.
- Compensation for denial of speedy trial.
- Calling any person by the caste falling in the category of S.C. or S.T., providing different tumblers etc. in restaurants and honour killings etc.
- Right against handcuffing.
- Humiliation by the Police on Independence Day.
- Right against inhuman treatment.
- Interference in conjugal life by the Police.
- Membership of a banned organization not sufficient to brand criminal.
- Right of detente to socialise with his family-members, friends and to have interview with his lawyer.
- Fair trial includes fair investigation.
- Non-citizens also entitled to right to life (Chakmas Migrants case).
- Compulsory Blood Test to Determine Paternity Violates Art.21.
- Right to food-starvation Death: State to provide free food.
- Ban on Smoking in Public Places.
- Sentence of death—Constitutionality.
- Hanging by rope.
- Public hanging.

- Right against delayed execution.
- Protection against illegal arrest, detentions and Custodial Death.
- Compensation for violation of Art. 21.
- The Court would not examine vicariously through NHRC the matters relating to the violation of Personal liberty.
- Homo-sexuality.
- Compensation to Rape victims.
- Interim Compensation to Rape victim.
- Prevention of sexual harassment of working women.
- Eve-teasing.
- Children living in jail with prisoner mother: Directions for safeguarding their welfare.
- Overloading School bus .
- Donation of organ by husband to his ailing father .
- Right to Electricity is right to life.
- Compensation for medical negligence: Child born despite sterilization.

RESPONSIBILITIES OF PARENTS AND GOVERNMENT:

The *International Convention on the Rights of the Child* gives all children the right to a family. The right to a family allows children to be connected to their history, and it offers a protective perimeter against violation of their rights. Children separated from their families become easy victims of *violence, exploitation, trafficking, discrimination* and all other types of abuse. Even so, it is sometimes the case that the family which should in principle be protecting the child is in fact inflicting the abuse.

Responsibilities of Parents about child Rights:

Establishing the residence of the child:

The child has an obligation to live with his or her parents, since they have a duty to “safeguard” them from all kinds of harm. Parents watch over their child by controlling his or her comings and goings, relationships (with members of the family, but also with friends and acquaintances),

correspondence (see CRC, article 16), and, more generally, all of his or her communications (letters, phone calls).

Schooling and education of the child :

Parents play a key role in their child's education. This mission is not limited to registration in a school establishment. It also includes moral, civic, religious and sex education—the goal being to give the child all the knowledge and training necessary for living in a society and acquiring sufficient autonomy for the day he or she becomes an adult.

Decision making in health matters for the child :

Parents decide on the care to give their child, treatments he or she will undergo, authorizations for hospital admission, consent for operations... Except in emergencies, no medical action may be carried out on a minor without the consent of the parents.

Maintenance for the child

Parents must nourish their child and maintain them in proportion to their resources and the needs of the child. This applies to cases in which the father and mother live together or apart. It clearly covers the need to feed the child. Parents must also assume general school and instruction costs, vacations, health coverage, etc.

Abuse inflicted upon the child

Abuse inflicted upon a child by one or both of the parents may take many forms and constitutes the most common cause of death among young children two years of age and under.

Sexual violence

Estimates of sexual violence committed by parents vary considerably as to the definitions used and the methods by which information was gathered. The conclusions from international studies conducted since 1980 reveal an average prevalence rate of sexual violence over a certain period of 20% for women during their childhood and between 5% and 10% for men.

Responsibilities of Government about Child Rights:

- I.** Furthering the vision of the UNCRC, the Juvenile Justice (Care and Protection of Children) Act, 2015 is India's fundamental law in dealing with children in need of care and protection. It caters to their needs through care, protection, development, treatment, social reintegration, through its child-friendly approach by addressing matters in the best interest of children.
- II.** The Protection of Children from Sexual Offences Act (POCSO), 2012 is one of the Indian

government's most progressive laws, to combat sexual violence against children. POCSO qualifies penetrative sexual assault on a child below the age of 12 as aggravated penetrative sexual assault, a crime punishable with a fine and a minimum term of rigorous imprisonment for 10 years, which can be extended to life imprisonment.

III. The Criminal Law (Amendment) Act, 2013's introduction of several new sexual offences under the Indian Penal Act, such as Section 376(2)(i), IPC, which punishes rape of a female under 16 years is considered an aggravated form of rape punishable with a fine and a minimum term of rigorous imprisonment for 10 years, which can be extended to life imprisonment.

CONCLUSION

The great poet Milton said, "Child Shows the man as morning shows the day." So, it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the potential beneficiaries of all the gains of sustainable development in any field. Therefore, urgent steps must be taken by the government, society and private sector to ensure the well-being of children. What still more important is to strengthen the national legal frame work in order to protect the rights of children.

REFERENCES

- Bhargwa, M. L. (2013). *Guide of Child law*, Kamal Publication.
- Pandey, J. (2014). *Constitution Law of India*. Delhi, Central Law Agency.
- Kapoor S. K. (2014). *Human Rights under International Law and Indian Law*, Delhi, Central Law Agency.
- Government of India. (1974). *National Policy for Children*, New Delhi, Government of India.
- India Alliance for Child Rights (2003). *India – Every Right for Every Child*, 2003 Citizens Alternate Review and Report on India's Progress Towards CRC Realisation, New Delhi: IACR.
- Joshi, N. (2012). *Protection of Children from Sexual Offences Act. 2012*, Kamal Publication
- Luthra, P.N. (1979). *The Child in India: Policy Provisions and Practices*. In *Child in India*, S.D. Gokhale and N.K. Sohoni (eds.), Bombay, Somaiya Publications Pvt. Ltd.

Ministry of Health and Family Welfare (2000). *Annual Report*, 1999-2000,
Government of India, New Delhi.

National Human Rights Commission's Annual Reports – 1993-94 to 2004-05

UNICEF Innocenti Research Centre. (2006). website www.unicef.org/research for the
'Compilation of General Comments of the Committee on the Rights of the Child'.