
Children and Their Rights in India

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ABSTRACT

Children on account of their tender age and immature mind need special care and protection. Children's are greatest gift to humanity. Neglecting children means loss to the society as whole. They have certain special rights and legal entitlements that are being acknowledged nationally and internationally. The constitution of India recognized the rights of children for the first time and included several articles dealing with their liberty, livelihood, and development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous industries. After the Independence of India & commencement of the constitution, children were conferred many rights under the constitution. The Government of India also enacted a number of legislations for the protection of the rights of the children in India. So in this paper focus is on the rights of children and protection which has been provided to them by the constitution of India.

KEYWORDS: Government, Child Rights, Constitution, Prohibition, Protection, Articles, Care.

INTRODUCTION

“The hallmark of culture and advance of civilisation consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole. – Justice V.R. Krishna Iyer”

During earlier times, not much special attention was given towards the development of children. Later on with the change of the times special attention towards the development of children was taken by the many governments of the world. In every civilized society development of children must be given utmost importance because they are the assets of a nation. Children possess certain special physical & mental characteristics for which they need special care & treatment. The Governments of every state shall make policies for the development of children. Long ago, there were no concern on the part of the government on the development of children & their rights. They have been used as labour from ages. Child labour is not a new term. It is been mentioned in

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Children and Their Rights in India

Manuscripts as well. Children were exploited in many ways. There was no formal system of primary education for the children in those days. They used to work in the fields with their parents. With the change of times the ambit of work changed from working in the fields to working in factories, mines, plantations etc. The conditions of children improved a bit during the British period in India. The British Government enacted many legislations which prohibited the working of children in hazardous factories. They also enacted certain legislations for the primary education of the children.

After the Independence of India & commencement of the constitution, children were conferred many rights under the constitution. The Indian constitution accords rights to children as citizens of the country, and in keeping with their special status the State has even enacted special laws. The Constitution, promulgated in 1950, encompasses most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy. The Government of India also enacted a number of legislations for the protection of the rights of the children in India.

WHO IS A 'CHILD'

The term 'Child' is not defined in the Indian Constitution. According to Article 1 of the United Nations Convention on the Rights of the Child 1989, 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. The legal definition of child tends to depend upon the purpose. There are number legislations in India which defines the term 'Child' depending upon the purpose. Under the Indian Majority Act, 1875 the age of majority is eighteen years & in case of a minor for whose person & property a guardian is appointed or whose property is under the supervision of the Court of Wards the age of majority twenty-one years. Under the Child Labour (Prohibition and Regulations) Act, 1986, child means a person who has not completed his fourteenth year of age. Under the Child Marriage Restraint Act, 1929, child means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age. Under Juvenile Justice (Care and Protection) Act, 2000, 'Juvenile' or 'Child' means a person who has not completed eighteenth year of age.

Child Rights in India

Directive Principles of State Policy in Indian Constitution (Article 39) empowers the state to direct policies so that the tender age of the children are not abused and childhood are protected against exploitation and moral abandonment. As a follow up of this constitutional commitment and being a party to the UN Declaration on the Rights of the Child, 1959, India adopted a National Policy on Children (NPC) on 1974. The NPC (1974) reaffirmed the constitutional provisions and authorized the State to provide adequate service to children through the period of their growth in order to ensure their full physical, mental and social development. Consequently, Child Labour (Prohibition & Regulation) Act, 1986 came into force debarring the children below

Children and Their Rights in India

14 years of age into any work or occupations. Being the signatory of the UNCRC (1992), India has globally recognized the Child Rights as binding constraint. After ratification of the UNCRC in 1992, India changed its law on juvenile justice [Juvenile & Justice (Care & Protection) Act, 2000] to ensure that every person below the age of 18 years of age, who is in need of care of protection, is entitled to receive it from the state. The National Commission for Protection of Child Rights (NCRC) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005. The Commission's responsibility is to ensure that all laws, policies, programs and administrative mechanisms are in consonance with the Child Rights perspective. The Constitution of India guarantees all children certain rights, which have been specially included for them. These include:

- Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A).
- Right to be protected from any hazardous employment till the age of 14 years (Article 24).
- Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).
- Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)).

Besides these they also have rights as equal citizens of India, just as any other adult male or female:

- Right to equality (Article 14).
- Right against discrimination (Article 15).
- Right to personal liberty and due process of law (Article 21).
- Right to being protected from being trafficked and forced into bonded labour (Article 23).
- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

Research, documentation and interventions by government and the civil society groups in the past have clearly brought forth some of the following child protection issues and categories of children that deserve special protection:

- Gender Discrimination.
- Caste discrimination.
- Disability.
- Female foeticide.
- Infanticide.
- Domestic violence.
- Child sexual abuse.
- Child marriage.

Children and Their Rights in India

- Child labour.
- Child prostitution.
- Child trafficking.
- Corporal Punishment in schools.
- Examination Pressure and Student Suicides.
- Natural disasters.
- War and conflict.
- HIV/AIDS.

In the efforts to improve the implementation of the Juvenile Justice System in the country UNICEF is also supporting the government with the development of training materials for the Judiciary and various other functionaries of the system like the child welfare committee members, police and care-takers in the various institutions under the Act.

Policies of the Government regarding Children

The Government of India has made a number of policies regarding the physical, mental & social development of the children of the country. The Government has also made many policies on the health & education of the children. The following are some of the important policies of the Government regarding children:

- National Policy for Children, 1974
- National Policy on Education, 1986
- National Policy on Child Labour, 1987
- National Health Policy ,2002

National Policy for Children 1974

India is one of the few countries in the world which have a written policy for children. This policy declares that the children are the 'supreme asset of the nation '.The following are some of the features of the policy:

- All the children shall be covered under a comprehensive health programme.
- Programmes to be implemented to provide nutrition to children & remove deficiency from the diet of the children.
- To provide non-formal education.
- Special attention to be taken towards the physically challenged, mentally retarded children.
- All children shall be ensured equality of opportunity.

National Policy on Education 1986

This was second policy on education; the first policy of 1968 was revised by this policy. This policy was regarded as a landmark one. This policy gave highest importance on the Universal

Children and Their Rights in India

Primary Education. It also gave importance to early childhood care & education. It gave emphasis on the need of large-scale investment on the development of children both through Government & through voluntary organizations. Later on a number programmes were undertaken throughout the country like the Operation Black Board, Sarva Siksha Abhiyan etc. The Operation Black Board & Sarva Siksha Abhiyan became very popular all over the country.

National Health Policy 2002

The first policy on health, 1983 aimed at achieving 'health for all by the year 2000'. The second policy on health, 2002 envisages giving priority to school health problems which aimed at health education & regular health check-ups at schools. The principle feature of this policy was to prevent communicable diseases like HIV/AIDS & to provide for universal immunization of children against all major preventable disease.

Child Protection in India

UNICEF uses the term 'child protection' to refer to preventing and responding to violence, exploitation and abuse against children including commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as child marriage. UNICEF's child protection programmes also target children who are uniquely vulnerable to these abuses; such as when living without parental care, in conflict with the law and in armed conflict. Violations of the child's right to protection take place in every country and are massive, under-recognized and under-reported barriers to child survival and development, in addition to being human rights violations.

Children subjected to violence, exploitation, abuse and neglect are at risk of death, poor physical and mental health, HIV/AIDS infection, educational problems, displacement, homelessness, vagrancy and poor parenting skill later in life. Child protection is an issue in every country and a high priority for UNICEF. Under the Convention on the Rights of the Child and other international treaties, all children have the right to be protected from harm. UNICEF activities are guided by the existing international normative framework for the rights of the child, as well as decisions and policies agreed in United Nations intergovernmental bodies

The National Commission for Protection of Child Rights

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, Programmes, 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. The Child is defined as a person in the 0 to 18 years age group. The Commission visualises a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order

Children and Their Rights in India

to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences inform the support the field receives from all the authorities at the higher level. The commission has been taking up various issues which were brought forth recently in the area of child abuse. The functions of the National Commission is

- Examine and review the legal safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation.
- Prepare and present annual and periodic reports upon the working of these safeguards.
- Inquire into violation of child rights and recommend initiation of proceedings in such cases.
- Undertake periodic review of policies, programmes and other activities related to child rights in reference to the treaties and other international instruments.
- Spread awareness about child rights among various sections of society.
- Examine and recommend appropriate remedial measures for all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence/riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution.
- Undertake and promote research in the field of child rights.
- Inspect institutions meant for juvenile/children.
- Inquire into complaints of deprivation and violation of child rights, non-implementation of laws and non-compliance policy decisions, guidelines or instructions.

Child labour

Articles 23 and 24 of the constitutions determine the term “child labour”. The Child Labour (Prohibition and Regulation) Act, 1986. This act was enacted on 23rd December 1986 by the parliament and was enforced on 26th May 1993 by the central government. The act was ineffective for over 8 years due to the inactiveness of the state and central government. The object of the act is

- a) Ban on the employment of children i.e., those who haven't completed their fourteenth year, in specified occupations;
- b) lay down a procedure to decide modifications to the schedule of banned occupation and processes;
- c) regulate the conditions of work of children in employment where they are not prohibited from working;
- d) lay down enhanced penalties for employment of children in violation of the provisions of this act, and other acts which forbid the employment of the children;
- e) to obtain uniformity in the definition of “child” in the related laws

The intention of this act was to ban the engagements of child labour in certain employments and to regulate in areas where it has not been prohibited. It provides power to the government to

Children and Their Rights in India

make rules with reference to health and safety wherever the employments of children are permitted. Night work for children is prohibited. The hours of work for the children are also to be considered by the state and the central governments. The act enables the governments to appoint inspectors to enforce the provisions of the act and it has also provided stringent penalties including imprisonment for violations of the provisions of the act. Any occupation which may be connected with transport of passengers, goods and mails, cinder packing, construction of railways, selling of fire crackers etc, may be included as child labour activities. Process may include bidi-making, carpet weaving, cement manufacture, cloth printing, weaving, dyeing, manufacture of matches, explosives etc, will fall under the category of child labour.

CONCLUSION

The paper reveal that ever since India achieved independence, the executive, the legislature and the judiciary in India have taken several proactive measures to put in place an exhaustive legal and policy framework for safeguarding the rights of children so as to ensure their survival, development, protection and participation. Several new plans, schemes and programmes have been initiated to address issues concerning children. Although there is much legislation by the government to curb many social evils against children, the governments are not taking any enough steps to ensure that children, the future citizens of our country are protected. These are the children that would lead our country to a healthy and prosperous nation. Yet, the plight of children across the country has not got better and continues to be precarious. The burning issues relating to children are the adverse child sex ratio, persistently high infant and child mortality ratios, wide gender gaps in literacy, escalating violence against children especially against the girl child and the rising incidents of female foeticide, female infanticide and child marriage. The need of the hour for all of them is to ensure that laws, schemes and programmes for protection and promotion of children's rights are implemented by them at the field level in the 'right' perspective. Children require guidance and support. They do not know the technicalities of life. It is for citizens like us to take their hand and show them the right way. Thus we see that the Indian Legal System has indeed made separate provisions in the best interest of its young citizens.

"We may not be able to prepare the future for our children, but we can at least prepare our children for the future"
(President Franklin D. Roosevelt)

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Children and Their Rights in India

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