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PROTECTION OF CHILD RIGHTS IN INDIA: ISSUES AND APPROACHES

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Abstract

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INTRODUCTION

Children are the most vulnerable sections in any society. The problem of children is global one and exists in all societies and countries of the world whether they are developed, developing and underdeveloped. A child can succumb to any sort of pressure as he is immature, weak and dependent on others. The child is exposed to all sorts of risks like health, educational opportunities, sexual exploitation etc. But the fact is that the future of any nation depends upon the sound development of its children. There are over 300 million children in India. They constitute about 35 percent of India's total population. So the issues relating to child care, child welfare and child development have always been engaging attention of the Government of India. The framers of the Constitution of India have also become fully aware of their responsibility towards children. This awareness is reflected in some of the constitutional provisions which intended for protecting the rights of children. Consequently, a plethora of legislative enactments have been passed to give effect to the constitutional mandates and international covenants and recommendations. Besides, with the ratification of the Convention on the Rights of the Child (CRC)¹, India is under an obligation to provide proper care and protection to children relating to education, nutrition and health etc.

The present paper is a humble attempt to highlight briefly the relevant provisions of the Constitution and notable legislative measures adopted to protect the rights of child in India and also to assess and evaluate the contribution of the judiciary in this field. It begins with a brief review of the international concerns about child rights.

INTERNATIONAL CONCERNS

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.

¹ The Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the United Nations on 20th November 1989. India acceded to it in 1992.

The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. There are four broad classifications of these rights. The following are the four categories that cover all civil, political, social, economic and cultural rights of every child:

1. **Survival rights:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
2. **Development rights:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
3. **Protection rights:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment; protection and rehabilitation for children who have suffered exploitation or abuse of any kind.
4. **Participation rights:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their capacities develop, children should have increasing opportunity to participate in the activities of society, in preparation for adulthood.

The UN Convention includes four articles that are given special emphasis. These are also known as 'general principles'. These rights are the bedrock for securing the additional rights in the UN Convention.

- that all the rights guaranteed by the UNCRC must be available to all children without discrimination of any kind²;
- that the best interests of the child must be a primary consideration in all actions concerning children³;
- that every child has the right to life, survival and development⁴; and
- that child's view must be considered and taken into account in all matters affecting him or her⁵.

IMPACT OF THE CONVENTION

A milestone in the international human rights legislation, the UNCRC has been instrumental in putting all the issues pertaining to children issues on the global as well as national agenda. In addition to this, it has extensively mobilized actions for the realization of the rights and development of children worldwide. It was not an overnight initiative that resulted in the adoption of the Child Rights. It took several years of movements and activism on shaping favourable, positive and constructive attitudes toward children, and also inciting actions to improve their well-being. The enormous efforts involved toward the implementation of the Convention, the significant amount of resources committed to this cause, and the overall effectiveness of the systems put in place for the execution process have a bearing on the success of child well-being outcomes.

Over the last 20 or so years, implementation of the Convention and its effect on child well-being varied from country to country and from one region of the world to the other. Based on analysis, there has been outstanding progress at a global level in addressing the issues related to children. These include progress in access to services, reaching their fullest potential through education, enactment of laws that upholds the principle of the best interests of child, and child survival.

INDIAN SCENARIO

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. It presents an impressive list of rights for children, some of which are not available even to adults.

Preambular Commitment - 'Justice, liberty, equality and fraternity' for all the citizens including children is the main purpose of the Constitution as provided in the Preamble.

Article 14 - 'equality before law and equal protection of laws' is available to every person including children.

Article 15 (3)-empowers the State to make special legal provisions for children. Though no grounds are mentioned, preferential treatment is permitted on consideration of the inherent weakness of the children⁶. Thus, the child labour prohibition laws, the Juvenile Justice Act and the Children's Act are constitutionally mandated.

Article 21A- mandates free and compulsory education for all children in the 6-14 age group⁷.

² Article 2

³ Article 3

⁴ Article 6

⁵ Article 12

⁶ H.M. Seervai, *Constitutional Law of India* (1984), p.307.

⁷ Article 21A has recently been inserted by the 86th Constitution (Amendment) Act 2002.

Article 23- puts total ban on forced labour and makes such practices punishable under law.

Article 24- prohibits employment of children below the age of 14 years in any factory, mine or any other hazardous activities.

Besides the above Fundamental Rights, the social and economic rights listed as 'Directive Principles of State Policy' also offer protection to children. These are:

Article 39 (e)- requires the State to direct its policy towards securing that the health and strength of workers and the tender age of the children are not be abused and that children are not involved by economic necessity to enter avocations unsuited to their age and strength.

Article 39 (f)- requires the State to direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.

Article 41 - requires that the State shall within the limits of its economic capacity and development, make effective provision for securing inter alia , the right to education and public assistance in cases of unemployment and other cases of undeserved want. Its implementation also expected to promote the welfare of the children.

Article 42 - obligates State to make provisions for securing just and human conditions of work besides some maternity benefit. It envisages a healthy psychological environment particularly when the child requires a normal up-bringing.

Article 45- requires the State to endeavour to provide early childhood care and education for all children until they complete the age of 6 years⁸.

Article 47- requires the State to raise the level of nutrition and the standard of living of its people, including children.

Also the 86th Constitution Amendment inserted a new clause (k) after clause (j) of **Art. 51-A**⁹ which states that 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.

The above constitutional philosophy found concrete shape in the post-independent legislative activity in the sphere of rights of the children. There are more than 200 enactments which clearly recognise the rights of the child. The important ones are:

1. The Factories Act, 1948¹⁰
2. The Child Labour (Prohibition and Regulation) Act, 1986¹¹
3. The Infant Milk Substitutes, Feeding Bottles and Infant Food Act ,1992¹²
4. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act,1994¹³
5. The Juvenile Justice (Care and Protection of Children) Act, 2000¹⁴

⁸ Under the old Article 45, a duty was imposed upon the State to provide free and compulsory education for children below the age of 14 years within the time limit of 10 years from the date of the commencement of the Constitution. This provision has been changed by the 86th Constitution (Amendment) Act 2002.

⁹ Article-51 A provides Fundamental Duties.

¹⁰ The Act defines a child as a person who has completed him/her 15th year of age. It defines an adolescent as one who is has completed his/her 15th year of age but not completed his/her 18th year of age. A young person is defined as either a child or an adolescent. According to this Act it is the duty of a certified medical practitioner or surgeon to examine and medical condition and certifies all young people working in the factory.

¹¹ The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they cannot.

¹² The purpose of the Infant Milk Substitutes, Feeding Bottles and Infant Foods Act 1992 and its 2003 amendment is to promote breast feeding of new born children and infants. It also looks to ensure that infant foods are regulated and used appropriately.

¹³ Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 is an Act of the Parliament of India enacted to stop female foeticides and arrest the declining sex ratio in India. The act banned prenatal sex determination.

6. The Prohibition of Child Marriage Act, 2006¹⁵
7. The Right of Children to Free and Compulsory Education Act, 2009¹⁶
8. The Protection of Children from Sexual Offences Act, 2012¹⁷
9. The National Food Security Act, 2013¹⁸

NATIONAL POLICIES AND PROGRAMMES

Some of our national policies and programmes are specially meant to protect the rights and interests of children. In 1974, National Policy for Children (NPC) was adopted. It is specifically meant to take care of the interests, rights and protection of the children. Again the Government of India adopts the National Policy for Children, 2013¹⁹. Apart from the NPC, some of the other national policies also deal with problems related to children, such as:

- National Policy on Education, 1986²⁰
- National Policy on Child Labour, 1987²¹
- National Nutrition Policy, 1993²²

¹⁴The Government of India enacted the Juvenile Justice Act in 1986. In 1989 the General Assembly of the United Nations adopted the Convention on the Rights of a Child. India ratified the UNCRC in 1992. The convention outlines the right of the child to reintegration into society without judicial proceedings where avoidable. Hence the Government, to fulfil the standards of the convention felt a need to re-write the law. Hence in 2000 the old law was replaced by the Juvenile Justice (Care and Protection of Children) Act.

¹⁵The Prohibition of Child marriage Act 2006 has been made effective from 1-11-2007 in India. The object of the Act is to prohibit solemnization of child marriage and connected and incidental matters. To ensure that child marriage is eradicated from within the society, the Government of India enacted Prevention of Child marriage Act 2006 by replacing the earlier legislation of Child Marriage Restraint Act 1929. This new Act is armed with enabling provisions to prohibit for child marriage, protect and provide relief to victim and enhance punishment for those who abet, promote or solemnize such marriage. This Act also calls appointment of Child Marriage Prohibition Officer for implementing this Act.

¹⁶The addition of the Right to Education (RTE) in the Universal Declaration of Human Rights in 1948 was the beginning of a remarkable expansion of educational opportunities around the world. The Parliament of India enacted the Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) on August 2009. The same got enforced on April 1st 2010. As per the Act, education is a Fundamental Right of every child who is between 6 and 14 years old. The act also states that until the completion of elementary education, no child shall be held back, expelled or required to pass a board examination.

¹⁷The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formulated in order to effectively address sexual abuse and sexual exploitation of children. The Protection of Children from Sexual Offences Act, 2012 received the President's assent on 19th June 2012 and was notified in the Gazette of India on 20th June, 2012.

¹⁸The Right to food legislation in India is an innovative new social security scheme being introduced by the UPA Government. A food security act has the potential to change the face of poverty and hunger in India. The National Food Security Bill followed from the National Food Security Ordinance, 2013 that was promulgated by the Government of India on July 5. After being introduced in both Houses of Parliament, the National Food Security Act, 2013 was passed in 10th September, 2013 with the objective to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity. It was signed into law on September 12, 2013, retroactive to July 5, 2013. The National Food Security Act, 2013 also called as 'The Right to Food Act' aims to provide subsidized food grains to two thirds of India's 1.2 billion people. The Act also has a special focus on the nutritional support to women and children.

¹⁹ This Policy is to guide and inform all laws, policies, plans and programmes affecting children.

²⁰The National Policy on Education 1986(modified in 1992) is an extensive document that covers all aspects of education from elementary to university level and even adult education.

²¹The Child Labour Policy of 1987 has envisages a legislative plan of action. It also calls for programme and project based intervention.

²²At the time in 1993 there were already a number of mechanisms in place to address the issue of mal-nutrition and under-nutrition such as the Integrated Child Development Services (ICDS), Special Nutrition Programme, and Wheat Based Nutrition Programme etc. The policy outlines a few additional provisions to ensure proper nutrition of all populations.

- National Health Policy, 2002²³
- National Charter for Children, 2003²⁴
- National Plan of Action, 2005²⁵

Some child targeted schemes and programmes initiated to serve the interests of the Indian children are:

- Mid-day Meal Scheme
- Integrated Child Development Scheme (ICDS)
- Integrated Child Protection Scheme
- Sarva Shiksha Abhiyan (SSA)
- Operation Blackboard
- Integrated Programme for Street Children
- Kishori Shakti Yojana
- Wheat Based Nutrition Programme (WBNP)
- Nutrition Programme for Adolescent Girls (NPAG)
- Rajiv Gandhi National Creche Scheme For the Children of Working Mothers
- Balika Samridhi Yojana (BSY)
- Initiatives to combat trafficking of Women and Children
- Central Adoption Resource Agency (CARA)
- Shishu Greha Scheme
- CHILDLINE services
- Reproductive and Child Health Programme
- Scheme for Working Children in need of care and protection
- National Child Labour Project (NCLP)

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, 2005²⁶. The Commission considers that its 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 the UN Convention on the Rights of the Child"²⁷. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualizes 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 to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences gathered at the field are taken into consideration by all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect

²³In 1983 the Government of India came out with a National Health Policy (NHP) to govern the functioning of the public health sector. In 2002 the Ministry of Health and Family Welfare introduced an updated health policy. In this policy they outlined the achievements and drawbacks of the 1983 policy and drew up new plans for the sector. NPH 2002 gives priority to school health education programmes that teach preventive techniques.

²⁴The National Charter for Children is a re-commitment document. It is a brief re-cap of issues children face and the duty the state has towards these children. It recognises the right of every child to survival, life and liberty and need for the state to protect these rights

²⁵The National Plan of Action for Children, 2005 is by far the most comprehensive planning document concerning children. Its value is that it clearly outlines goals, objectives, and strategies to achieve the objectives outlined and recognises the needs of all children up to the age of eighteen. It is divided into four basic child right categories as per the United Nations Convention on the Rights of a Child: Child survival, Child development, Child protection and Child participation.

²⁶NCPCR has been established by an Act of Parliament called the Commission for Protection of Child Rights Act, 2005. It began operation a year later in March 2007.

²⁷http://en.wikipedia.org/wiki/National_Commission_for_Protection_of_Child_Rights

for decentralization at the local bodies and community level and larger societal concern for children and their well-being²⁸.

JUDICIAL RESPONSE

The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the tremendous growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizen including children. Some of the landmark child-specific verdicts delivered by the Indian Judiciary make it clear that the judiciary has shown a positive attitude towards the protection of the rights of children.

The Supreme Court in *Peoples' Union for Democratic Rights vs. Union of India*²⁹ said that Article 24 of the Constitution provides that no child below the age of 14 years shall be employed to work in any factory, mine or engaged in any other hazardous employment. This is a constitutional prohibition which must be obeyed.

In *Labourers of Salal Hydro Project vs. State of J & K*³⁰, the Supreme Court held that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government should provide that the children of construction workers who are living at or near the project site should be given facilities for schooling.

Another landmark judgment is *Sheela Barse vs. Union of India*³¹. In this case the Apex Court had suggested that instead of each state having its own Children's Act different in procedure and content, it would be desirable if the Central Government initiates a Parliamentary Legislation on the subject to bring in uniformity in regard to the various provisions relating to juveniles in the entire country³².

The Court in series of cases has unequivocally declared that right to receive education by the child workers is an integral part of right of personal liberty embodied in Article 21 of the Constitution³³. In *Goodricke Group Ltd vs. State of West Bengal*³⁴ the Court held that it would be for the Centre and State/Union Territories to raise necessary resources to achieve the goal of providing free education.

In *M. C. Mehta vs. State of T. N*³⁵, the Supreme Court had directed that a sum of Rs. 25,000/- per child should be deposited in a child welfare fund and the returns of which should be spent on the welfare of such child who is withdrawn from hazardous employment³⁶.

In *Lakshmikant Pandey vs. Union of India*³⁷, the Supreme Court held that any adoption in violation of or non-compliance with may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. In *Vishal Jeet vs. Union of India*³⁸ Supreme Court dealt with some seminal questions relating to the sexual exploitation of children. Here it has been observed that it is highly deplorable and heart rending to note that many poverty stricken children and girls in the prime age of youth are taken to the 'flesh market' and forcibly pushed into "flesh trade" which is being carried on in utter violation of all cannons of morality, decency and dignity of mankind. In *Gaurav Jain vs. Union of India*³⁹ the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to

²⁸ <http://ncpcr.gov.in>

²⁹ AIR 1982 SC 1473

³⁰ AIR 1984 SC 177

³¹ AIR 1986 SC 1773

³² In accordance with the observations of the Supreme Court, the Central Government enacted the Juvenile Justice Act 1986 to deal with the problem of juvenile delinquency in India.

³³ *Unni Krishnan vs. State of A.P*, AIR 1993 SC 2178. Justice Mohan observed "in educational institutions which are seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up statesmen and soldiers, patriots and philosophers, who will determine the progress of the land".

³⁴ Writ Petition (Civil) 951 of 1989

³⁵ AIR 1997 SC 699

³⁶ The Apex Court has recognised primary education as an aspect of personal liberty and thus elevated it to the level of each child's constitutional right.

³⁷ AIR 1986 SC 1272

³⁸ AIR 1990 SC 1413

³⁹ AIR 1997 SC 3051

formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

CONCLUSION AND SUGGESTIONS

Though a noteworthy progress has been achieved, yet in India, there is still a long way to go in realising the rights of children. Despite the above constitutional and statutory safeguards, judicial activism, policies and programmes of the government, the reality is that the children in our country are exploited lot. There are several factors that forbid effective implementation of the laws. Due to relatively low success in achieving concrete child development outcomes in India, the condition of underprivileged kids and underprivileged youth is harsh and needs urgent attention. Violation of the rights of children seems to have reached epidemic proportion in our country. There is a need to intensify efforts for children welfare at all levels to implement the policies and programmes of the government and contribute to create a world suitable for children.

Keeping the above facts in mind, the following suggestions are being made:

1. Laws relating to rights of the child care, welfare and development be consolidated.
2. It is necessary to improve the system of Justice so as to ensure timely detection of the cases of child abuse and neglect.
3. Active efforts to be made to rescue the children from bondage and all hazardous places.
4. Special care should be taken of plight of street children and children living in slums.
5. There must be pressure, both socially and legally, on the parents to send their children to schools.
6. The human rights enforcement mechanism must be geared up to ensure that the children below the age of 14 years are not deprived of their Fundamental Right to education⁴⁰.

⁴⁰ Dr R.R. Dangwal, "Article 21 and Child's Right to Education", Lucknow University Law Journal, Vol. 1, at 45 (1994).