



WWJMRD 2018; 4(3): 35-38

www.wwjmr.com

International Journal

Peer Reviewed Journal

Refereed Journal

Indexed Journal

UGC Approved Journal

Impact Factor MJIF: 4.25

E-ISSN: 2454-6615

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India's Commitment towards Children's Right

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Abstract

Lots of Human rights treaties refer to Child Protection and Child Rights and are of their provisions apply to children. However, it was felt that children needed a separate convention and a clear definition of children's legal rights under international law. The rights of child are such a broad topic that neither time nor space will permit to do full justice to the topic. This paper, therefore, shall limit itself to examining briefly how child rights have evolved over the years within the international community, and how all developments related to child issues were codified in a Comprehensive Universal Documents - the CRC, and it is to be implemented to national, regional and global levels thereby providing the protection to the rights of child.

Keywords: Child protection, child rights, Children and Directive Principles.

1. Introduction

The protection from all exploitation and opportunities to grow physically, mentally, morally and spiritually is their birth right. Childhood is universal transcend all nationalities and know no artificial boundaries.¹ Nature has provided some inherent rights to every human being including children. These fundamental rights or 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.² They are inherent to the human person, inalienable and universal.³ The concept of human rights is based on the dignity and worth of the individual, the unit of creation without reference to man-made artificial divisions based on colour, race, sex, religion etc. Human rights are essential for the realization of true potential of every human being.⁴

2. Children Rights and Indian Constitution

The Constitution of India provides to all its citizens justice, social, economic and political, liberty of through, expression belief, faith and worship, equality of status and opportunity. The constitution of India has also resolved to promote among its citizens; fraternity in assuring the dignity of the individual and the unity of the nation.⁵ Constitution is with reference to all the citizens of India including children. Though children are not expressly mentioned in the explanations provided under the constitution, it is implied in its meaning, concerning the meaning of the term 'citizen' the constitution state that "every person who has born in the territory of India" is a citizen of India.⁶ Children conforming to the above provision are deemed to be citizens of India Constitution guarantees certain fundamental rights to its citizens However, by considering the child's vulnerability constitution offers special rights and protection to children.⁷

¹ See preface to Vijay Rattan, Integrated Child Development Services Program Administration, Vol. II, (1997) S. Chand & Company Ltd., New Delhi

² N.S Sreenivasalu, "Human rights : Many Sides to a Coin", (2008) P. 45

³ <http://www.unicef.org/crc/index-framework.html> accessed on 21st December 2008

⁴ J.S Verma, "The New Universe of Human rights", (2004) P. 18

⁵ Id; Preamble

⁶ Id; Article 5

⁷ See Generally, Kanzi's Constitution of India, 6th edition (2001), Vol. II, India Law House, New Delhi.

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2.1 Child – An Important National Asset

Mahatma Gandhi said, “If we are to reach real peace in the world and if we are to carry on a real war against war, we shall have to begin with children. And if they up in their natural innocence, we were not have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously and unconsciously, the whole world is hungering.”

Children are considered as the nation’s ‘supremely important national assets and its living malleable potential. The future of any nation is largely determined on how its children grown and develop.⁸

In *Lakshmi Kant Pander’s case*,⁹ the Supreme Court has emphasized upon the great significance of child welfare in the country. According to the Supreme Court, “the welfare of the entire community depends on the health and welfare of the children. The constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country.”

2.2 Preferential Treatment to Children

The State Government under Article 15(3) of the constitution is empowered to make special provisions for the children. The use of word ‘for’ in this clause signifies that special provision can be made only in favour of children and not against them.

2.3 Right of Child of a Dignified Life

According to Punjab and Haryana High Court a child cannot be treated as an “inanimate object”. And cannot be treated like a property. Right to dignity means giving the child the fullest opportunity to develop his personality. It means right to live a healthy live including a reasonable standard of comfort and decency¹⁰, and all that give meaning to a child’s life.¹¹

2.4 Right to Survival

Right to life guaranteed under Article 21 includes within its purview of the right to Health and survival etc. children in India continue to face unequal chances of survival depending where they born. Because the infant mortality rate in rural areas has always exceeded that in urban areas and the gap continues to persist. But dramatically India has made progress in reducing its IMR from a level of 129 deaths per 1,000 live births in 1971 to 1979 in 1992.” India made commitment for reduction of IMR to 45 per 1,000 live births in 2007 and that is also achieved by the government. The next commitment made by India by 2012 is of reduction in IMR to 28 per 1,000 live births.¹²

2.5 Right to Shelter

All children including abandoned child, homeless and

orphans have right to Shelter. In ‘*Chemeli Singh vs. Union of India*’¹³ the Supreme Court emphasized on the importance of the right to shelter as one of the basic human rights created to ensure all facilities to the man to develop himself as a member of a civilized society. “The court said that shelter for a human being is not a mere protection of life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually.”

2.6 Right to Education

15th December 200. Seventy three years since Mahatma Gandhi gave the call for universal education in 1937; sixty three years since independence; fifty eight years since constitution, instead of making education a fundamental right made it part of the Directive Principles; seventeen years since the Supreme Court in 1993¹⁴ ruled on the right to education; ten years after the 86th constitutional amendment was passed by the parliament in 2002 by inserting

Art. 21-A making education a fundamental right for children in the restricted age group of 6 to 14 years; the right to free and compulsory education Bill was introduced in the Rajya Sabha on 15 Dec. 2008. Though the delay on part of the state is deplorable; the introduction is undeniably momentous,¹⁵ that takes the shape of the *Right of Children to Free and Compulsory Education Act, 2010*. Instead of Article 21-A, Recognition of the need to make available free and universal primary education is also provided by Directive Principles of State Policy under Article 45 as *The State shall endeavour to provide, early children care and for free and compulsory education for all children until they complete the age of fourteen*. Art 41 provides *the state shall within the limits of its economic capacity and development; make effective provision for securing the 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*. Further, Article 51-A (k) says that *It shall be 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, the age of six of fourteen*.¹⁶”

2.7 Right to proper Nutrition

Art. 47 states that it is the duty of the State to raise the level of nutrition and standard of living and no improve public health. This Article provides that *the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and in particular, the state endeavour to bring about prohibition of the consumption, except for medicinal purpose, of intoxicating drinks and drugs which are injurious to health*.¹⁷”

¹³ AIR 1996 SC 1051

¹⁴ In a historical judgment the Apex Court I Unni Krishnan vs. State of A.P. [(1993)1 SSC 645] has held that the “right to education” upto the age of 14 years is a fundamental right within the meaning of Art. 21 of the constitution.

¹⁵ Vinod Rand, “Right to Education”, Seminar 593, January 2007, P. 87

¹⁶ Subs. by the constitution (Eighty-sixth Amendment) Act, 2002

¹⁷ Article 47, the Constitution of India, 1950.

⁸ M.P Jain, “Indian Constitution of India, 5th ed., P. 1272

⁹ Laxmi Kant Pandey vs. Union of India, AIR 1984 SC 496

¹⁰ Chameli Singh vs. State of UP, AIR 1996 SC 1051

¹¹ Ram Sharn vs. Union of India, AIR 1989 SC 549

¹² <http://www.unicef.org/India/overview-219.htm>. accessed on 6th February 2015.

2.8 Right against Exploitation

Art. 23 & 24 guarantee “the fundamental right against exploitation”. Art. 23 prohibits ‘traffic in human beings, ‘beggar’ and ‘forced labour’. Article 24 provides for the protection to children from being employed in hazardous employments. In *Raj Bahadur’s case*,¹⁸ the expression “traffic in human being” was defined as “any dealing in human beings like Chattel”. In *Vishal Jeet’s case*,¹⁹ the Apex Court issued directions to State Government and UT’s for the eradicating the evil of child prostitution and for evolving programme for the care, protection, treatments, development and rehabilitation of young fallen victim. The court further stated that Article 23(1) is to be read with Article 39(e) and 39(f) which impose obligation on the state for protection of children and young against exploitation an against moral and material abandonment.²⁰

3. Children and Directive Principles

Directive principles are guidelines for the state in its functioning. At the same time these directive principles imposes certain obligations on the part of the state in guaranteeing the fundamental rights of citizens including children. As far as the rights of children are concerned following directive principle is very much significant. Article 39 of the constitution directs the state “to provide opportunities and facilities to children to develop in a healthy manner and in the conditions of freedom and dignity. It is an obligation on the part of the state to see that child and youth are protected against exploitation. There shall not be moral and material abandonment of children”.²¹ This directive intends “to protect children rights such as right to childhood, right to health, right against exploitation.” The state has the responsibility to create such on atmosphere for the overall development of the child. It is a duty on the part of state to prevent the children from doing a work which does not suit their age.²²

4. Steps taken by Indian Government in interest of Children

4.1 At National Level

a. Ministry of Women and Child Development

The department of women and child development was set up in the year 1985 as a part of the Ministry of Human Resource Development and then as part of the Ministry of Social Justice and Empowerment. From January 2006, the department has been upgraded to a ministry under the independent charge of Smt. Renuka Chawdhary; Ministry of state for women and child development.

Mandate: - The mandate of ministry is to promote holistic development of women and children. The ministry implements and monitors also certain innovative programmes for women and children. Most of the

programmes of the Ministry are run through non-governmental organizations. The major policy initiatives undertaken by the ministry in the recent part include universalization of a programme titled “Integrated Child Development Services” (ICDS), provide a parcel of services comprising supplementary nutrition, health check-up, immunisation and recommended services from pre-school non formal education.

b. National Human Rights Commission

The National Human rights Commission is an independent and autonomous statutory body established under the Human rights commission Act 1997. The NHRC was created in response to 1991 UN-sponsored meeting of representatives of national institutions held in Paris, which laid down a detailed set of principles on the status of national institutions commonly known as the Paris Principles. These principles, subsequently endorse by the UN Commission on Human rights²³ and the UN general Assembly²⁴ have become the foundation and reference point for the established and operation of National Human rights Commission.

Mandate: - The Commission’s mandate include inquiry at its own initiative of on a petition presented to it by a victim into complaint of violation of human right. The commission receives complaints in thousands every year. These relate to custodial death, custodial rape, disappearance, police excesses, indignity of women etc., it also deals with issues relating to violations of child protection and child right such as child trafficking, child labour, sexual violence against children, organized workshops on these issues and publishes studies or findings related for instance to missing children, trafficking on children, etc.

However, it is important to note here that the commission does not have the power of prosecution. What it can only do is to make recommendations to the government or recommendations to the courts to initiative proceedings based on the inquiry that it conducts. And for the purpose of inquiry the ‘commission have all the powers of a civil court trying a suit under C.P.C

c. National Commission for protection of the Child Rights

The National Commission for Protection of the Child Rights Act 2005 envisaged setting up at national and state levels a National Commission and State commissions respectively. This statutory body for the protection of the rights of the children was constituted in 2007. It aims to favour effective enforcement of children’s rights and proper implementation of laws and programmes relating to children.

d. The Commissions for Protection of Child Rights (Amendment) Act 2006

In the commissions for protection of Child Rights Act, 2005, in the proviso to section 4, for the words “Minister-

¹⁸ Raj Bahadur vs. Legal Remembrancer, AIR 1953 Cal. 522

¹⁹ Vishal Jeet vs. Union of India, AIR 1990 SC 1412

²⁰ Subs. by the Constitution (Forty-Second Amendment) Act, 1976, Section 7, for clause (f) (w.e.f) 3-01-1997

²¹ Id; Art. 39(e)

²² Id; Art. 39(b)

²³ Resolution 1992/54 of 3rd March 1992

²⁴ Resolution 48/134 of 20th December 1993

in-charge of the Ministry of Human Resource Development”, the words “Minister-is-charge of the Ministry of the Department of Women and Child Development” shall be substituted.

e. Central Advisory Board on Child labour

The Central Advisory Board on child labour was constituted on March 4, 1981. The mandate of the Board includes -

1. To review the implementation of the existing legislation administered by the central government.
2. To suggest legislative measures as well as welfare measures for the welfare of working children.
3. To review the progress of welfare measure for working children.
4. To recommend the industries and areas where there must be a progressive elimination of child labor.

4.2 At State & District Level

a. The State Commission for Protection of Child Rights

“The commissions for protection of Child Rights Act 2005 provide that States Governments may constitute state commissions for protection of child rights in their state and designate a state level and other district level children’s court in their respective state. The Act empowers the State Government to notify at least a court in the state or a court of sessions in each district as a children’s court, with concurrence of the Chief Justice of the concerned High Court. For every child’s court, the State Government is required to appoint a public prosecutor or appoint an advocate who has been in practice not less than seven years as the special public prosecutor.²⁵”

b. Child Welfare Committee (CWC)

According to the Act²⁶ it is mandatory to constitute a Child Welfare Committee in every district. “It is the highest authority of the cases relating to protection, development, care, rehabilitation and treatment of the child who are in need of care and protection. It is also to provide the basic needs to the children and for the protection of human rights. It is the sole authority to deal with the matters relating to the children in need of care and protection.”

c. Juvenile Justice Boards (JJB)

Under the JJA Amendment Act 2006, “it is mandatory to constitute a JJB in each district. It deals with the matters relating to juveniles in conflict with law. The Juvenile Justice Boards will consist of two social workers in which one shall be a woman along with a judicial Magistrate. Even in those states/UT’s where JJB’s have been established; the infrastructure is often inadequate making it difficult for the board of effectively discharge their duties. This ultimately results in unnecessary delay in disposition of matters pending before the Board.”

d. Special Juvenile Police Unit (SJPU)

“The Juvenile Justice (Care and Protection of Children) Act 2000 provides for setting up special juvenile police units in every district to coordinate and upgrade the police interface with children. All the police officers, designated as Juvenile/Child welfare officers, are members of SJPU. While states/UT’s have formed the SJPU and many others are in process of setting them up. As a statutory requirement and Integrated Child Protection Scheme (ICPS) shall provide for two paid social workers in each SJIU for supporting the unit out of which one shall be a woman and other having expertise in child protection.”

Thus, the protective environment for child at global level that is adopted by India is well in line because it is not only adopted at national but State and District level as well. Every effort has been made by our nation to provide children a protective shield against abuse, neglect and exploitation etc.

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²⁵ Available at [http:// wcd.nic.in/](http://wcd.nic.in/) assessed on 20th March, 2016.

²⁶ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006