

INDIAN CHILDREN: REALITY AND RIGHTS

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ABSTRACT

The child is a future asset to a nation. The child forms the fortune of a nation. He is a future citizen. The health, well being and overall sound development of a child are the interest of the society as well as of the nation. However, we see, unfortunately children face various types of abuses at various spears of life. Therefore, there should be proper rules and regulation in place in a nation to curb these abuses. Here in this article, the author explores concerns on the development of a child as a whole and his various rights in India to address those concerns.

KEY WORDS: Child, Child Rights, Laws on Rights of a Child.

1. INTRODUCTION

John Milton has stated that “childhood shows the man, as morning shows the day”. This quote illustrates almost about the importance of a child in our lives. The emotional, societal and physical growth of children features a straight effect upon the general improvement of a state. Justice V.R. Krishna Iyer states, “The hallmark of culture and progress of civilisation comprises in the fulfilment of our responsibility to the young generation by opening up all opportunities and chances for every child to develop its personality and rise to its full stature, physical, mental, moral and spiritual. It is the natural right of each and every child that cries for justice from the world as a whole.” Thus understanding the status of children is immensely important. Within the Indian context it may be assumed that 0 to 14 years of children constitute around one third of the entire population of the country.¹ There are many aspects in reference to the event of a child like survival

¹ “Children in India, 2018- A Statistical Appraisal”, Social Stases Division, Central Stases Office. Ministry of Stases and Programme Implementation, Government of India, available at http://www.mospi.gov.in/sites/default/files/publication_reports/Children%20in%20India%202018%20%E2%80%93%20A%20Statistical%20Appraisal_26oct18.pdf.

and health, development and education, child care and nutrition, protection and participation are some major for the overall development of a child. To ensure their development in infancy adequate investment is necessary. With harmless and unbiased surroundings, every child has an essential right to life as a whole and to grow healthily and decently during the fundamental years. Adverse birth sex ratio and infant mortality are responsible some of the challenges are faced by the nation. It is extremely important to safeguard children's interests and protect them against violence, exploitation and abuse. In earlier times, no particular attention was paid to children's development. With the changing of days, many governments of the world gained special attention and focused on the development of children. Children possess quite physical and mental characteristics for which they need protection. Every government must promote various forms of development and a good environment for children. Earlier there have been no rules and regulations and no such concerned on the part of government with regards to the development and protection of child rights. However, subsequently we saw a surge of rights for the overall development of a child. The article explores the entitlement of a child in India.

2. DEFINITION OF A CHILD

There is no concept of a child in particular. Various laws for the word "Child" have given various meanings. According to Article 1 of the United Nations Convention on the Rights of the Child, "Any adult less than 18 years of age, except where a majority is obtained earlier, under the rule of the child". This Article therefore grants each country the right to decide whether or not childhood ends at the age of 12, 14 and 16 or regardless of age. Likewise, children are those individuals who are not twenty one years old if a male, and eighteen years old have not been fulfilled as a female. A child is also defined as anyone less than 18 years of age under various laws and policies like, The Juvenile Justice (Care and Protection of Children) Act, 2015, Protection of Children from Sexual Offences Act, 2012, National Policy for Children, 2013.

3. REALTY OF A CHILD IN INDIA

Nearly every culture today shares the view that the younger the kid, the more physically or psychologically vulnerable he or she is and therefore less able to defend himself. Age limits formally replicate the social

opinion on the development of his capacity and his accountability for children. In general, age limits are used for formally monitoring the activities of children, such as when they can leave school, to marry, to vote and responsibility on adult crime and when they can join the armed forces. Thus what is the right of child varies from nation to nation. On the other hand child rights are included in human rights with particular attention to the rights of special protection and care afforded to minors. They naturally all have their basic rights only because of being children and these rights are inalienable and are enforced in court of law. International agreements for the rights of children state that in the spirit of harmony, dignity, compassion, liberty, equality, solidarity every child must grow older. Such values will direct the education, health care, the law and social welfare structures of each nation in a perfect manner. However, this is not often the case, unfortunately.

Even though India has today been on the path of economic growth, and there have been several initiatives by the government for eradication of poverty, a major portion of the population continues to live in poverty. Economic inequalities are widespread and children are most affected section of these. In the context of children, there are areas of concerns such as: concerns on survival, good health, education, and abuse In the context of India, the rights of the child can be understood in the setting of these areas.

3.1. Concerns on Survival. Concern on survival of a child is bound to rise. He is having a right to life, which is bare necessity. However if we see, according to vital statistics data for 2012, “the Infant Mortality Rate” (IMR) varies from 10 to 56 in the different states in India. IMR is a number of deaths per 1000 live births per year of child under one year of age. In rural India IMR has declined by 30% while the decline is by 28% in urban India since 2003. A report by CRY puts the IMR at 7.² It is seen as an important predictor for human health, nutrition, poverty and education. Reduction in IMR is one of the “Millennium Development Goals” (MDGs) which is prescribed by the United Nations with a deadline of 2015, which has been expired. However, the decline in IMR is one positive development in the context of right to life. According to Global Hunger Index (GHI) Report which was released on 14th October 2013, the mortality

²Bhandary, Shreya(2013-a), available at Dr John Menachery, “Evolution of Child Rights in India”, Module 1, p.4, retrieved from http://epgp.inflibnet.ac.in/epgpdata/uploads/epgpcontent/social_work_education/social_work_with_children_and_child_protection/01_evolution_of_child_rights_in_india/et/6082_et_et.pdf.

rate of children younger than age five in India is about 6%.³ Every year the deaths of thousands of young people in India have been caused mainly by poverty linked to cultural preferences for male children. The practice of women's foeticide (selective abortion), women's infanticide and the general abuse of girls tend to contribute to the broad killing of children, which have adversely affected sexual ratios. Girls' abortion has also experienced a significant number of deaths. The child sex ratio is still falling in India. Census statistics for 2011 showed that for every 1000 boys, there were more declines in the 0 to six age group in child sex, up from 927 in 2001, to 914 girls. In an effort to stop female feticides practice and control the decline of **CSR**, the government of India has adopted the "Pre-Conception and Prenatal Diagnostic Technique (Prohibition of Sexual Selection) Act, 1994." In addition, the data from the 2011 Census found that the "socially backward" categories as well as the Scheduled Castes and Scheduled Tribes are in the lead of the CSR categories. This trend indicated that removing backwardness could actually work for gender justice. Also incapacitating access to techniques for determining sex also works a long way for restoration of gender justice.

3.2. Concerns on his good health: The right to life is inclusive of right to good health. In India, numbers of kids die every year. The bulk of these deaths are primarily responsible for lack of sufficient health care, lack of immunization, avoidable illnesses, unregulated drinking water and sanitation, the lack of routine pregnancy screening, poor deliveries and malnutrition. Just 54 percent of children received complete vaccination, according to the CRY survey. "India is home to half of the "wasted children" globally, reckons the recently launched Global Nutrition Report 2020. More than a third (37.9 per cent) of our children under-five years are stunted, and over a fifth (20.8 per cent) are wasted, the report adds. These rates are significantly higher compared to average prevalence in developing countries, which stand at 25 per cent for stunting and 8.9 per cent for wasting. Furthermore, even the National Family Health Surveys (NFHS) data shows that in the decade up to 2015, children suffering from severe acute malnutrition grew to 7.5 per cent from 6.4 per cent". The sex ratio at birth (number of girls per 1,000 boys) for children born in the last five years showed a dip in most major states although the overall national figure went up marginally from 914 in the last survey

³ Verma, 2013-b, available at Dr John Menachery, "Evolution of Child Rights in India", Module 1, p.4, http://epgp.inflibnet.ac.in/epgpdata/uploads/epgpcontent/social_work_education/social_work_with_children_and_child_protection/01_evolution_of_child_rights_in_india/et/6082_et_et.pdf.

(NFHS 3, conducted in 2005-06) to 919.⁴ “The National Mental Health Survey 2016 reported that the prevalence of mental disorders is 7.3% among children aged 13–17 years and it is similar in both genders. The prevalence among urban children is nearly double (13.5%, 10.4–16.5, 95% CI) compared to the rural children (6.9%, 4.0–9.7, 95% CI)”.⁵ Yet one more issue in the context of child health (and child protection) is “Child Marriage”. Child marriage happens in India. All children, whatever their social and economic situation, have the right to care and protection, to develop and develop into a complete person. Child marriage infringes all these rights unconcealed. It is widely thought that 50% of Indian women are married before the age of eighteen. It is witnessed that child marriages are more widespread among rural and poorer sections of the population.

3.3. Concern on education: According to the 2011 census data, it is found that 26% of the Indian population are illiterates. Therefore, this accounts for the largest number of illiterate people in the world. Lack of parental literacy leads to neglect of children’s education. Gender based and caste based discrimination are also primary elements which causes downgrading of children in the educational structure. It is very unfortunate that girls are still denied equal opportunities for elementary education. As a result, primary education is far away from universal. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which came into force with effect from 1st April, 2010 is a significant milestone towards safeguarding the educational rights of children. CRY report says that, even if the RTE Act is enforced, the national dropout rate at the primary level is 40%

3.4. Concern on his protection against abuse: The word "child protection" primarily denotes the protection of the child from various kinds of threats or hazards to life and childhood. It is to create such rules and regulation which will reduce their vulnerability and protect them from various harmful situations. A study conducted in 2007 by the Government of India’s Ministry of Women & Child Development found that more than 69% of children aged 5 to 18 years are abused. "Child Labour" is one of the most important issues of

⁴ Ghosh, A. (2017, March 3). India’s family health picture has several bright patches, but also a few dark spots. The Indian Express. Retrieved from <https://indianexpress.com/article/explained/indias-family-health-picture-has-several-bright-patches-but-also-a-few-dark-spots-4551622/>

⁵ Md Mahbub Hossain and Neetu Purohit, “Improving child and adolescent mental health in India: Status, services, policies, and way forward”. Indian J Psychiatry. 2019 Jul-Aug; 61(4): 415–419. doi: 10.4103/psychiatry.IndianJPsychiatry_217_18 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6657557/>.

child safety. In all types of labour, hundreds and thousands of children work in India. Statistics show that India has 16.57 million employees who continue to make it the world's largest. Data collected by CRY showed that about 54% of child labour, 18% in households, 15.5% in buildings and 4.83% in manufacturing are in agriculture. The key reason why children are called to work is mostly because parents do not have a suitable job and an adequate income. In addition, different sectors of industry and other economies prefer children as workers as they are able to hire at a lower price. In order to combat these situations there are number of legislations, policies and programmes such as Factories Act, Mines Act, Child labour prohibition Act and other government schemes are in force.

The developed nation like India has the biggest populace number of children in the world. As indicated by the report Indian have in excess of 375 million children, which as comprise around 40% of the child population. Out of these 69% of India children are survivors of physical, passionate or sexual maltreatment.⁶ The world most elevated child Labour is present in India and the majority of the children are living under more awful condition which depends on denial, ignored, exploitative and harsh condition. They are not having any chance to appreciate and to live a cheerful life. The main roots of cause of child labour are poverty, family pressure, migration, carelessness of parents, and other social ill. Further, the basic deprivations are lack of adequate shelter, food, basic education etc. Enormous number of Children are found in disadvantaged condition that is Homeless Children, Migrant Children, Street Child, Children who are psychically and mentally Challenged, Child labour, Child beggar, Child in prostitution, Child sexual abuse. The day to day environment of children's is so most noticeably terrible and they are straightforwardly or by implication engaged with activities such as child labour, pick picketing, prostitution, asking and so forth which has after effect of infringement of basic child rights.

4. RIGHTS TO ADDRESS THE CONCERNS

A comprehensive welfare and child rights policy is incorporated into the Constitutional System. In addition, the parliamentary provisions also guarantee the dignity of each child and, in addition, to protect children's interests, include noteworthy legislative act. The Constitution of Indian has provisions which as guarantees

⁶ Gupta Neha, N.K. Aggarwal, "Child abuse", Delhi Psychiatry Journal, Vol.15, No.2, 2012.

to each citizen including children to be liberated from misuse, and ensure their privileges. It guarantees by the state for the commitment of constitutional norms to protect from the infringement of child rights.

4.1. Constitutional Rights of a Child: The constitution of India is the supreme law of the land, and also the socio-political document of the country. The framers of the Indian constitution incorporated the concept of Human Rights contained in the Universal Declaration of Human Right. The constitution contains a number of articles set out in Part III and Part IV of the DPSP for rights of children. Article 14 of the Constitution of India states, a citizen shall have equality before law and equal protection of law. This includes a child as well. Article 15 (1) states there can not a law that discriminate on various grounds like religion, race, caste, sex, place of birth etc between citizens. A child can take the protection of Art 15 (1) as well. Moreover, if any special right is created in favour of a child, it cannot be challenged on the grounds of discrimination under Article 14 and 15 (1) of the constitution. Article 15 (3) empowers the parliament to make special provisions favouring children. Unless prescribed by due process of law, Article 21 ensures that no person is denied of his right to life and fundamental freedom. Article 24 stipulates that no child under 14 years of age shall work or be employed in any risky or hazardous work. Article 37 provides for the flexibility for the government to undertake appropriate legislative and administrative actions to ensure children's rights. Article 39(e) of the State Political Principles points out that the exploitation of tender children should not occur or that vocations which are not only economically required for their age or power should not be imposed upon them. Under the terms of freedom and integrity, Article 39(f) of the State policy allows children to be given opportunities and facilities for healthy growth and to be shielded from violence, morale and material abandonment. Article 45 of the State Policies provides for all children to be provided with free and compulsory education till 14 years of age. As per Art 46, the weaker part of the population is to be protected against social injustice and other kinds of exploitation. Article 47 safeguards the right to have proper nutrition and a good standard of living.

4.2. Legislations and Landmark Judgements on Child Rights: Indian Parliament passed various legislations to protect the interest of children. Some of these are, Children's Act, 1960, The Prohibition of Child Marriage Act 2006, The Juvenile Justice (Care and Protection of Children) Act, 2015, The Protection of Children from Sexual Offences (POCSO) Act, 2012 and Right to Free and Compulsory Education

Act, 2009. The judiciary plays a significant role through various judgements for the protection of the interests of children. In *M.C Mehta v. State of Tamil Nadu*⁷ Supreme Court held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of Employment of Children Act, 1938. In *PUDR v. Union of India*⁸ the Apex Court held that construction work is a hazardous employment and therefore U/A 24 of the constitution of India no child below the age of 14 years can be employed in construction industry even if it is not reflected in the scheduled to the Employment of Children Act, 1938. Again the Apex Court in *Sheela Barse v. Union of India*⁹ directed to the various governments that Children's Act enacted by various states must be brought into force and there provisions should be implemented vigorously. Considering the social stigma and plights of children of prostitutes, the Supreme Court of India directed the government in *Gourav Jain v. Union of India*¹⁰ to make provisions for the separate hostels and schools for the children of prostitutes. Indian Judiciary time to time expressly expanded rights of children to various spheres of life. And these judicial pronouncements are laws of the land and are equally enforceable, as in duty bound, by the executive.

Apart from those above laws, the government of Indian time to time brought various policies and programmes for the protection of the rights of the child and to combat various challenges faced by children in India. Policies or programmes and schemes on the Rights of a Child, National Policy for Children (1974), National Policy on Education (1986) and Labor (1987), Mental Health Act (1987), National Nutrition Policy (1993), National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act 1999, Charter for Children (2004), and National Plan of Action for Children (2005) National Policy for Children, 2013. The National Plan of Action for Children, 2016, Integrated Child Development Services (ICDS). Pradhan Mantri Matru Vandana Yojana, Beti Bachao Beti Padhao

⁷ AIR1997 SC 699

⁸ AIR 1983 SC 1473

⁹ 1986 3 SCC 596

¹⁰ AIR 1990 SC 292

CONCLUSION

It reveals that, since India achieved independence, she has taken a range of proactive steps by the three organs of the government that is legislature, executive and judiciary to put in place an exhaustive legal and policy structure to safeguard children's rights, in order to guarantee their survival, growth, security and participation. Once, Franklin Roosevelt stated that we may not be able to prepare the future for our children, but we can at least prepare our children for the future. In line with that a number of new plans, programs and schemes have been formulated for addressing issues relating to children. While the government has made a great deal on the front of legislation to curb many social evils against children it is important how these are to be implemented in the ground to protect children. Children need guidance and assistance. The techniques of life are unknown to them. Individuals like us have to take their hand and show them the right way. Thus, we can see that in the best interests of its young citizens the Indian Legal System has indeed made separate provisions. From the above discussion it may be concluded that there are numbers of legislations formulated in India but those are meaningful in their level of implementation.

Conflict of Interest

No

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