

Instruments to Protect Rights of Children: Revisiting the Impact of Legislative and Social Policies for Development and Protection of Children

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According to the International paradigm the term “Child” implies to every human being below the age of 18 years. The universally adopted definition of “Child”, evolved from the Convention on the Rights of the Child (UNCRC) has been accredited and ratified by most countries since 1989. India ratified UNCRC in the year 1992 but long before being a signatory of UNCRC, India had the endeavours to protect child rights and considerations for child welfare. Since the inception of the Constitution of India there are many a provisions for the welfare of the vulnerable sections of the country and the well-being of the children have always been prioritized. Child has been defined in point of view to age in different age categories for different laws. As per the Child and Adolescent Labour (Prohibition and Regulation) Act amended in 2016, child are defined the human being within the age limit 6 to 14 years; in the Prohibition of Child Marriage Act the boys with 21 years of age and girls up to 18 years of age considered to be child in respect to their immaturity in sexual life. In the Juvenile Justice (Care and Protection of Children), 2015 and in the Protection of Children from Sexual Offences Act, 2012 persons below the age of 18 years have been termed as children.

Childhood is a time in everyone’s life cycle that can’t be avoided. Childhood has its own problems and experiences that are often different from the other stages of life and it needs much care and protection to accomplish the better result in future both for the society and the nation. Children are more prone to vulnerability than adults due to their less experiences and less cognitive development to identify and recognize the complex patterns of the society and politics. They are often decided by adults rather than being properly guided by them. Having no power to vote and mostly being overpowered by the adult members of the society, their voice is unheard. As consequences children are often victims of abuses and exploitations. In accordance with the Global Hunger Index (GHI) of 2019, India is at the 102nd position behind its neighbouring states like Nepal, Pakistan and Bangladesh and there is almost 45% deaths of children under 5 years of age due to malnutrition. As per the same report 32 million children have never been to school in this country. There are the social interests as well as national interests to rear up the children in the best way to keep the best interest of them. A nation can progress only through the progress of its future generations. There are many constitutional and legislative safeguards and child-favourable policies for bringing about the good of the children throughout the country. But the question is-Are the safeguards and policies for children really amicable for the beneficiaries or are they implemented properly?

India’s commission for the protection of children’s rights Act-2005 which was amended in 2006, has the mandate to ensure all Laws, Policies, Programmes and Administrative mechanisms to promote children’s rights in India with a mechanism of child rights aspects as stated in the Constitution of India and in the United Nation’s Convention on the Rights of Children of 1989 for the 472 million children in India below the age of 18 years and representing 39% of the country’s total population. A huge percentage (29%) of this figure comprises of children between the age group 0-6 years. Four rights for children mentioned in the UNCRC are -1. Right to Survival, 2. Right to Protection, 3. Right to Development and 4. Right to Participation. The Right to Survival encircles the right to life, the highest attainable standard of health, nutrition, adequate standard of living and a name and a nationality. The Right to Protection includes emancipation from all forms of exploitation, abuse, inhuman or degrading treatment, and neglect, special protection in special circumstances such as situations of emergency and armed conflicts, in case of disability etc. the Right to Development embraces the right to education, support for early childhood care and development, social security, right to leisure, recreation and cultural activities. Right to Participation involves respect for the views of the child, freedom of expression, access to appropriate information, freedom of thought, conscience and religion.

Recognising the significance of child welfare and child development, the Founding Fathers of the Indian Constitution have introduced specific provisions in Part III and Part IV of the Constitution. Even the Preamble of the Indian Constitution assures the dignity of individual in all its citizens. According to Part III of the Constitution, popularly known as Fundamental rights, Article 14 articulates that the State shall not deny any of its citizen's equality before law within the territory of India and this treatment is apposite too to the children. Article 15(1) ensures the prohibition of discrimination on the grounds of religion, race, sex, caste or place of birth and 15(2) states that no person shall be narrowed from using any public property whereas Article 15(3) says that nothing in this Article shall restrict the State from making any special provision for women and children. Article 17 provides safeguards to the children from severe exploitation from the causes of untouchability. Children to be subjected to some special conditions have offered defence under the Article 19 that ensures protection of certain rights. Article 21 keeps up the preliminary importance of early childhood development and the right to food, nutrition and health. Right to Education, free and compulsory for the children in the age range 6-14 years have been rigidly ensured under Article 21A. Using children as sources of income, forced labour, employing in hazardous work in factories have been strictly prohibited in the Articles 23 and 24 respectively.

Though non-justiciable and require legal sanctions for realization, the Directive Principles of State Policy in Part IV of the Constitution, also have made some provisions to realize the rights of children. Article 39 A states of free legal aid for children and 39(e) warns not to abuse the tender age by economic necessity. Article 39(f) represents that children should be given opportunities to grow in a healthy manner. Article 45 Provision for early childhood care and education to children below the age of six years. Even in Clause K of the Article 51 A in the Fundamental Duties, it is stated clearly that the parent or guardian of children will provide opportunities of education for children between the ages of 6-14 years. A number of Laws have been introduced in perspectives of the provisions of constitutional approaches hence after like "The Right to Education Act, 2009(Article 21 A), "The Immoral Traffic Prevention Act, 1956 (Article 23), he Bonded Labour System Abolition Act, 1976(Article 24), "The Child Labour (Prohibition and Regulation) Act, 1986 (Article 24) etc. To keep consonance with the right to equality and equal opportunity and right against discrimination, mentioned in Article 15 and 39(f), some enactments have been commenced like "The Persons with Disabilities Act", "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 . The Juvenile Justice (Care and Protection of Children) Act, 2015 has the consonance of Article 22 in the question of protection against arrest and detention.

Many committees and organizations have been instituted by the Govt. of India for the development of children so far after independence. The National Human Rights Commission (NHRC) was set up in 1993 for protection of child rights. The Ministry of Women and Child Development as a branch of the Government of India plays a pivotal role to administrate the rules and regulations and laws concerning the development of women and children in the country. Institutions like National Commission for Protection of Child Rights (NCPCR) was established to provide safeguards to the children from discriminations on the basis of class, caste, religion and sex and to look after the issues of child protection with alternative child development plan whenever required. The Protection of Child Rights Act also set up state level State Commission for Child Rights (SCPCR) to execute various child development plans with the power of review and suggestions on child care issues. Founded in New Delhi in 1966, under the aegis of the Ministry of Women and Child Development, the National Institute of Public Cooperation and Child Development (NIPCCD) promotes research and trainings to the stakeholders of child protection issues. Central Adoption Research Authority (CARA) plays a significant role in cases of adoption of orphaned, surrendered and destitute children. Central Social Welfare Board is one of the pioneer organizations, set up to ensure welfare of children with the other vulnerable population.

Not only the laws and enactments, but also a number of schemes and policies have been brought in by the Government of India assure and secure the child rights in the country. The Integrated Child Protection Service (ICDS) popularly named as Anganwadi Services was initiated in 1972 to save the physical, mental and emotional health of the children. In 2006 the ICPS was put forward with the aim to create a central

mechanism to offer services for child in need of care and protection and child in conflict with law and other children who are suffering from vulnerability. The other significant programmes offered by the government for child welfare and development are “Beti Bachao Beti Padhao, Udaan, Saksham, Swachh Vidyalaya, Valika Samriddhi Yojana, CHILD LINE Services, General Grant-in-Aid Scheme, National Plan of Action for Children, An Integrated Programme for Street Children and many more. To prevent trafficking, the Government also started a Pilot Project to Combat the Trafficking of Women and Children for Commercial Sexual Exploitation in Destination Areas. The Government of India introduced a number of policies to keep child rights upgraded. There are the policies for children like-The National Policy for Children, 1974 and 2013, National Policy on Education, 1986, National Policy on Child Labour, 1987 and National Health Policy.

Do the arrangements to retain child rights actualize the rights of children in the country?

The rights of children are subject to each other and they are impartible. According to their nature and type, rights are categorised into immediate and progressive ones. The protection of children issues, their nationality, discrimination, punitive measures, right to restoring in family all are the examples of immediate rights whereas health, education like issues are the progressive rights. The children's rights index possibly be realized through the analysis of the indicators which are actually specific, observable and measurable characteristics, generally employed to check changes or progress of a programme whether achieving a specific outcome. There are numbers of indicators to determine the exact scenario of the status of children in relation to the child rights and initiatives by the Govt. to ensure child development and growth. But it's not possible to deal with all such indicators in such a small sphere. Rather few of the child development Indicators are dealt with to make an idea over the efficacy of the child development programmes and the implementation of child rights involving them. The needs of the children as addressed in form of rights if analysed, the essence of the implementation of the arrangements to offer rights can be realized best. Hence few programmes of the Government can be drawn to understand the real status of the child rights in the country.

Children and Health: Despite economic improvements, India has a high child mortality rate with marked differences in child mortality both between and within different states. One in five deaths in children under the age of 5 years worldwide happens in India. The child mortality rate in India is even higher than in the neighbouring states of Bangladesh and Nepal. India has failed to achieve its millennium development goal targets for child mortality. Over 40% of Indian children are underweight and more than ¼ babies are with low birth weight. In rural India over 45% of children under the age of five are found to be underweight. Though the Government provides public health care, only 1.1% of gross domestic product (GDP) is shared out to health. The private medical sector is the basic source of healthcare for number of population in urban and rural areas in the country. Only 5% of the households of the total population has health insurance and most of the families have no financial capacities to access private healthcare. However the benefit of Accredited Social Health Activists (ASHA) has a significant role to reduce the neonatal mortality rate in the rural areas. Another initiative of the Government namely National Rural Health Mission, a public scheme has a good endeavour to expand access to healthcare to the poor in the remote rural areas specially the cash transfer to the expectant mothers. In spite of all these initiatives, the country is not yet successful to provide universal health care for majority of its children. It is unfortunate to observe that only 36% of the children were fully vaccinated by the age of 12 months. Uttar Pradesh only achieved immunization rates of 23% and Nagaland 21% that is really undesirable.

Children and Education: As per the report of the National Sample Survey Office (NSSO), 32 million children in India up to the age of 13 years of whom majority belonging to disadvantaged class have never attended any school. The Annual Status of Education Report (ASER) and some other studies bring out that more than 50% of students studying in class five or of fifth standard are not capable of reading basic text or solving basic arithmetical problems. While the Right to Free and Compulsory Education to all children aged between 6 and 14 are ensured along with the incentives like Mid-Day-Meal, scholarships and reservations in private schools are in place and are excellent in paper, the result speaks a different truth, a different story of unsuccessful attainments of education in the children in the country. Free education with the provisions of mid-day meal is not enough to make education attractive to the children. Though there are a significant number of government schools, there is a shortage of quality infrastructure that includes fans in classrooms to separate toilets for genders. Till the date, as per the report of the UNICEF, out of 100 students, 29% of children drop out of school before completing the full cycle of elementary education. As per the Rapid Survey of Children 2013-2014 by Ministry of Women and Child Development, around 50% of the adolescents in the country have not

completed secondary education and about 20 million children in the country have not attended pre-school. According to the National Achievement Survey, NCERT, 2017, half of the primary school-going children who constitutes approximately 50 million have not achieved grade appropriate learning levels. Even the children's school readiness at age 5 has been far below the expected levels.

Children and Protection: Even after having number of legal instruments and policies India is at large baffled in the issues of child protection. Violence on children is overspread in all settings such as family, educational institutions, child care institutions and in the communities. The four main laws pertaining for children such as the Juvenile Justice (Care and Protection of Children), 2015; the Child Marriage Prohibition Act of 2006; the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 and the Protection of Children from Sexual Offences Act, 2012 have been proved incompetent to provide the best support in regard to protection issues. Of late the Supreme Court suo moto took cognizance of the statuses of children Homes across the country during the pandemic situation of COVID-19 in connection with the case of 35 inmate detected Covid-positive in a Chennai based government run shelter Home. The Court though ordered for best practices at the Homes in such situations, it shows that there is a huge need to infix more defined and concrete push and pull factors to get the Act really child friendly. As per the analysis of the census it is observed that child labour has grown by more than 50% in the urban areas in India. Even though the age for marriage has been specified, there is a significant increase in child marriage throughout the country. The mean age of marriage in the country is found to be 16.6 years. Violence and abuse on children is widespread and leaves a harsh reality. Children of either sex have been more or less the victims of domestic violence, sexual abuse and trafficking that can be clear from the record of National Crime Record Bureau.

In a country like India with a huge population level, requires to pay more attention to enforce the legislations, policies and schemes that emerges as notifications and it needs more assessments time to time and also to keep in mind that prevention is better than cure when complete eradication of the problem is not possible. Despite the existence of efforts in International and National level, children till the date, children remain in a vulnerable status. Endeavours from the Government to keep up the child rights is appreciable if it goes beyond the paper work to practical approach. Judiciary has an important role to play in keeping up the rights of children in cases where required. In *M.C. Mehta vs. State of Tamil Nadu and Others*, the apex Court observed that children under the age of 14 years should not be involved in hazardous job and passed order to the government to set up and maintain child labour rehabilitation fund. In another case of *Vishal Jeet vs. Union of India* the Hon'ble Supreme Court manifested directions to the State Government to set up rehabilitative Homes for children who earn from begging on streets and also for the girls who are forcefully pushed into 'Flesh Trade'. As per Justice Verma Committee Report on "Amendments to Criminal Law" the Juvenile Justice Act of 2015 has been failed to provide safeguard to children in India. The report states without any ambiguity that a child can't be hold offender before supporting him/her with the basic rights in accordance with the provisions of Indian Constitution. The report focuses on the status of the children's Homes where both categories of children mentioned in the ACT i.e. CNCP and CCLs are kept together with extensive lacking of minimum infrastructural requirements. Apart from the initiatives made by the government authorities and different organizations the family, community and the other stakeholders should provide attention for the proper development of children. The Media should play a crucial role in the critical issues of health, nutrition and recreations and other problems concerning or affecting child rights.

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