

THE ROLE OF UNCRC WITH SPECIAL EMPHASIS ON LEGAL FRAMEWORK FOR CHILD RIGHTS IN INDIA

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ABSTRACT

“There can be no keener revelation of a society’s soul than the way it treats its children”

-Nelson Mandela

A Child at a tender age is often innocent, gullible, vulnerable and brimming with trust. Along these lines it is significant that the society and the family as equivalent supporters of child’s wholesome development, safety and well-being guarantee a childhood be happy and adoring. Their lives should develop bit by bit, as they increase new encounters in the growing age. Be that as it may, for some kids, the truth of joyful youth is obscure. Through history, we have been seeing that children are manhandled, misused and exploited. Children, particularly ones from the poor economic background suffer starvation, are deprived of basic education, suffer labour exploitation. In conformity to UNICEF, 22,000 children die each day due to the effects of poverty.ⁱ As per data from Census 2011, the number of child labourers in India is 10.1 million of which 5.6 million are boys and 4.5 million are girls.ⁱⁱ

The children of a nation are most valuable assets of country as they carry a responsibility to sculpt the destiny of a nation. Therefore, it is important that child rights are adequately legislated. Since there had and has been a large number of data revealing the vulnerability of children all over the world, the evolution of child rights and protection marked its beginning and time and again the laws related to child rights and protection were implemented. The paper

discuss the meaning of child, various child rights, its importance and the nexus between child rights and Indian Constitution.

The article will mention different laws passed in India to protect the integrity of children and take help of landmark cases that will help in understanding child rights and protection in a broader perspective.

Keywords: Child, Child Rights, UNCRC, Development, Protection, UNCRC

INTRODUCTION

The definition as to “who is to be considered as a child” varies from legislation to legislation. Every piece of legislation is formed when a legal and social need arises to do so and therefore age of child has to be considered in different cases according to the object and reasons of the said act.

The UN Conventionⁱⁱⁱ on Rights of child defines “child” as a person under the age of 18 years. Further the Juvenile Justice Act^{iv}, Hindu Minority and Guardianship Act^v, Protection of Women from Domestic Violence Act^{vi} also defines a ‘child’ as a person who is under 18 years of age. However the Immoral Traffic (Prevention) Act^{vii} defines a ‘child’ as someone who is under the age of 16 years and a ‘minor’ who is between age group of 16-18 years. The Child Labour (Prohibition and Regulation) Act defines ‘child’ as a person below 14 years of age.^{viii} However the amended Juvenile Justice Act 2015 states that children of and between 16-18 years may be treated as adults if they commit heinous crimes such as rape, acid attack, murder, etc. ^{ix}The Protection of Children from sexual offences Act^x states that, “child means any person below the age of eighteen years.” This Act simply aims to protect the children from sexual offences and harassment.

However the definition of child given by UNCRC is an international definition accepted worldwide.

CHARACTER OF UNITED NATION CONVENTION FOR CHILD RIGHTS, 1989

The Convention for Child Rights is the milestone instrument adopted by United States for ensuring child rights. The convention containing 54 Articles is in fact, the most notable declaration on child's rights. The Convention for Child Rights was adopted by the United Nations in November 1989 with 196 countries as state parties and 140 countries as signatories to UNCRC, with only United States of America still left to ratify.^{xi}

The general comprehension of child right is basic human right. Every individual irrespective of him/her as an individual are humans born with crucial innate rights. Such rights take account of civil rights, family environment, essential healthcare, welfare, basic education and certain special protection measures. The UNCRC outlines the fundamental human rights that every child should be outfitted with. As indicated by The United Nations Convention on the Rights of the Child (UNCRC), Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 irrespective of race, origin, colour, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics.^{xii}

CHILD RIGHTS ENCLOSED IN UNCRC

The broad arrangement given in convention justly covers all civil, political, social, economic and cultural rights of every child. The various rights as depicted in the Convention have been summed up into different articles as given below-

- Non-discrimination^{xiii}
- Child's right to freedom of thought, conscience and religion subject to limitations imposed by law.^{xiv}
- The right of a child to a bear a name from birth and attain nationality^{xv}
- The right of a child to social security including social insurance^{xvi}
- The right to sufficient nourishment, shelter, recreation and medicinal services^{xvii}
- The entitlement of differently-abled child to be given special treatment, education services and care^{xviii}
- The right of a child to free and compulsory education in elementary^{xix}

- The right to obtain protection in conditions where child is momentarily or everlastingly deprived of his or her family atmosphere, or in whose own best interests cannot be allowed to remain in that environment^{xx}.
- The right of child concerned by inter-country adoption to enjoys protection and standards corresponding to those existing in the case of national adoption.^{xxi}
- Right of every child to a standard of living adequate for the overall development of child taking into consideration all physical, mental, spiritual, moral and social development.^{xxii}
- Right of the child to rest and leisure, to take part in play and recreational activities^{xxiii}
- Protection against all forms of neglect, cruelty and exploitation^{xxiv}, including any act associated with economic exploitation ^{xxv}

The UNCRC has been instrumental in perceiving the child rights. It envelops a wide range of rights from the right to participation, the right to survival, the right to development and the right to protection that forms the nuts and bolts for guaranteeing child rights. The convention is legally binding agreement^{xxvi} between state parties that seeks to establish a benchmark for children's right in all spheres be it nutrition, education, medical facilities, development and protection.

THE OPTIONAL PROTOCOLS: A GUIDING LIGHT

Further there are three agreements commonly known as optional protocols that are to support the convention. However, as the name it suggests they are merely "optional" in nature. These protocols are to ensure that no child to be forcefully recruited into the army^{xxvii} and the other protocol devised Prohibition on child pornography and child prostitution^{xxviii}. Further, Optional Protocol to the Convention on the Rights of the Child on a communications procedure^{xxix}: Right to the child to directly approach UNCRC in any circumstance or situation where rights are violated and the committee on rights of child to investigate such matters. The two formers were adopted in the year 2000 and the latter was adopted in 2011. Optional Protocols attend to some of the nastiest forms of human rights exploitation perpetrated against children globally. The government that seeks to ratify the Convention in certain circumstances has right to decide whether or not to sign up to these Optional Protocols.

LEGISLATIONS PERTAINING TO CHILD RIGHTS IN INDIA

This UNCRC Declaration was accepted by the Government of India on 11th December, 1992. Since then in consensus with UNCRC the government of India had been time and again taking decisive calls on ensuring the child rights. A nation's children are a "supremely important national asset"^{xxx} and therefore the government of India in order to ensure the well-being, security and development of children enacted certain legislation which are described underneath –

THE CHILD LABOUR ACT^{xxxi} WHICH WAS THEN SUBSEQUENTLY AMENDED IN YEAR 2015: It states that employment of any child below the age of 14 is prohibited and describes strict punishment for the violators. In the case of **Mehta vs. State of Tamil Nadu^{xxxii}**: **In this case the employer had engaged children in a firecrackers manufacturing factory. This act was clearly in contravention of** provisions of the Child Labour (Prohibition and Regulation) Act and hence was punished with a fine of 20,000. A direction was also issued to the employer of the factory to discontinue the act.

THE PROHIBITION OF CHILD MARRIAGE ACT 2006: The main objective of the act is to prohibit solemnisation of marriage between children. For the purpose of this act, a child is any person who has not completed 21 years in case of male and 18 years in case of female^{xxxiii}. Further a marriage to which either party is a child would be considered as a child marriage.^{xxxiv}

THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT PASSED IN 2015^{xxxv}: The Act of 2015 is a replacement to the Act of JJ Act 2000.: The main aim of this act is to concentrate and revolutionize the law concerning to Juvenile's. The meaning of term "juvenile" is associated to person who is yet to complete 18 years of age. Further the new act allows juveniles in the age group of 16–18, involved in Heinous Offences, to be tried as adults.

RTE ACT^{xxxvi} OF 2009: The act calls for free and compulsory education for children between the ages of 6 to 14 years. The right to education is one of the most important aspects interpreted under Article 21A^{xxxvii} (inserted by 86th Amendment) of the Indian Constitution. A recent amendment was made to do away with no detention policy in schools.^{xxxviii} The amendment was to give two months' time to re-appear for the exam in case he fails an examination. In case of **P. Unni Krishnan vs. State of Andhra Pradesh^{xxxix}** the Apex Court stated that "Right to

education” is included under the “Right to Life” The Supreme court further observed that the State has a duty to establish educational institutions to allow the citizens to have the benefit of the said right.

POCSO ACT, 2012^{xl}: The POCSO Act is a special legislation that seeks to define a child as person under the age of 18 years. The act takes into its ambit sexual abuses namely sexual harassment, penetrative or non-penetrative sexual abuse, and pornography. The act furnishes strict punishments for violators which have been categorised as per the severity of the offence.

INDIAN CONSTITUTION IN SHAPING THE CHILD RIGHTS

The Constitution of India guarantees rights to the children under the articles mentioned below-

Part III - Fundamental Rights

These are the basic or minimum rights that each human being is guaranteed by the constitution subjected to restrictions.

- Equality before law^{xli}: States that there should be equality before law to all citizens including the children. The Hon’ble Supreme Court in *Gaurav Jain v Union of India*^{xlii} held that the children of the prostitutes have all the rights as given to any other child such as right to equality of opportunity, dignity, care, protection and rehabilitation. Such children have rights to be part of the societal existence without any pre-blot attached on them.
- Guarantees the right against discrimination^{xliii}: The Constitution of India Prohibition of discrimination on basis of religion, race, caste, sex or place of Birth. Further the article affirms that state can make special law for women and children^{xliv}. The enactment of POCSO act is one such example where special law had been enacted for Protection of children.
- Right to life and personal liberty^{xlv}: To live a life with human dignity and to ensure adequate food, shelter and clothing. *The court specifically in case of Shantistar Builders v. Narayan Khimalal Totame*^{xlvi} stated “For the animal it is the bare protection of the body, for a human being it has to be a suitable accommodation, which would allow him to grow in every segment, be it physical, psychological and logical to ensure wholesome progress of a child”. It stated that purpose of The Constitution is to ensure all round

progress of children which would be practically possible if child has a proper reasonable home.

- The Right to Education^{xlvii}: Right to free and compulsory elementary education for all children in the 6-14-year age group. In case of J.P. Unni Krishnan v. State of Andhra Pradesh^{xlviii} Supreme Court restricted the view given in Mohini Jain's case and held that every child has a fundamental Right to Free Education till 14 years of age after which it is limited by the State's economic capacity and development.
- Prohibition On employment^{xlix}: It states that no child under the age of 14 years shall be made to work in factories, mines or any kind of work that is hazardous in nature. In case of People's Union for Democratic Rights and Others v. Union of India & Others¹, commonly known as Asian Workers case it was held that children under age of 14 years shall not work in factories, industries that are hazardous in nature.

Part IV - Directive Principles of State Policy

- These are the principles or guidelines that direct the state when it has to make a law. However, DPSP'S are non justifiable, meaning to say that a person cannot enforce them in court of law. Such principles are Right of weaker sections to be protected from social injustice and all forms of exploitation^{li}, Right of child to grow in a healthy manner, to get equal opportunities, and to get protection from all forms of exploitation^{lii} and that State must raise the level of nutrition and raise the standard of living of its people and the enhancement of public health^{liii}

Part IV-A - Fundamental Duties

- These are the moral or ethical obligations or duty pertaining to all general public of the country to uphold the welfare of the country and to sustain the unity of the nation. It is the duty of parent or the guardian to provide opportunity of education to child between 6-14 years. However, now the right to education is a recognised fundamental right.^{liv}

CONCLUSION

India's constitution offers broad shields to the human privileges of kids. Further government scheme, policies and judiciary have additionally committed in reinforcing and consolidating children's rights. However there lays a quandary while ascertaining "who is a child". Various acts and statues characterize the meaning of child in different ways which causes loopholes and ambiguity. Hence there should be a uniform age for consideration of child..

Children, owing to their developing stage and gullible identity are susceptible to the environment. Therefore, social workers and nongovernmental organisation assume a significant job in annihilating social shades of evils that are detrimental to children and their development. The global endeavours for the child rights and security lead to a movement of child rights in India. The Constitution of India, 1950 presented a progressive development in the sphere. A lot of enactments have been time and again legislated to ensure the elimination of social evils and ensure the development and protection of children.

ENDNOTES

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ⁱⁱⁱ Article 1, The UN Convention on the Rights of the Child,1989

^{iv} Juvenile Justice Act,2000

^v Hindu Minority and Guardianship Act,1956

^{vi}Protection of Women from Domestic Violence Act,2005

^{vii} Immoral Traffic (Prevention) Act,1986

^{viii} Child Labour (Prohibition and Regulation) Act,1986

^{ix} Juvenile Justice Act,2015

^x Section 2(d), The Protection of Children from Sexual Offences Act ,2012

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^{xii} Article 2, The UN Convention on the Rights of the Child,1989

^{xiii} Ibid

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^{xv}Article7, The UN Convention on the Rights of the Child,1989

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xxxii AIR 1997 S.C. 699

xxxiii Section 2(a), The Prohibition of Child Marriage act, 2006

xxxiv Section 2(b), The Prohibition of Child Marriage act, 2006

xxxv Juvenile Justice (Care & Protection of Children) Act, 2015

xxxvi The Right to Education Act, 2009

xxxvii Article 21(A), The Constitution of India, 1950

xxxviii The Right to Education Act, 2019

xxxix AIR 1993 S.C. 2178

xl Protection of children from sexual offences act, 2012

xli Article 14, The Constitution of India, 1950

xlii (1997) 8 SCC 114; AIR 1997 SC 3021

xliiii Article 15, The Constitution of India, 1950

xliv Clause (3) Article 15, The Constitution of India, 1950

xlv Article 21, The Constitution of India, 1950

xlvi AIR 1990 SC 630

xlvii Article 21-A, The Constitution of India, 1950

xlviii 1993 AIR 2178

xlix Article 24, The Constitution of India, 1950

¹ AIR 1982 SC 1473

li Article 46, The Constitution of India, 1950

lii Article 39 (f), The Constitution of India, 1950

liii Article 47, The Constitution of India, 1950

liv Article 51 A (k), The Constitution of India, 1950