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Constitutional Provisions Relating to Child Rights: A Myth or Reality

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ABSTRACT

Children are the future and a symbol of the prosperity of the world. Children are also the prospectus in life of every nation, but in spite of too much so called development in 21st century we stand at same footing and call them vulnerable group. In our constitution there are so many provisions relating to children's dignity, freedom, child care and protection from exploitation and moral and material abandonment. Child has rights, but due to age constraints they are unable to claim her/his rights. Unfortunately, the rights of child care exercised by proxy through their family, school, society and as well as the governments and they are discriminated in every society. In other words it can be said that, these very agencies are responsible for violating children's rights in many ways. All children in similar circumstances are required to be treated in similar manner and if not so treated, such treatment can be challenges on the ground of discrimination and arbitrariness.

Keywords: *child right, constitutional provision, international convention on CRC, supreme court*

I. INTRODUCTION

India is a social welfare country. The preamble of our constitution secures to all citizen of India, **Equality** of status and of opportunity and to promote among them all, Justice Social economic and political, **Liberty** - of thoughts expression, belief, faith and worship. **Fraternity** Assuring the dignity of individual and the unity and integrity of the nation.

Part III of the constitution contains a long list of fundamental rights, the inclusion of a chapter of fundamental rights in the constitution of India is in accordance with the trend of modern democratic thought, the idea being to preserve that which is an indispensable condition of a free society. Fundamental Rights were deemed essential to protect the rights, dignity and liberties of the people against the encroachment of the power delegated by them to their Government.

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In *Maneka Gandhi V. Union of India*³ Bhagwati J. (as he then was) observed: These fundamental rights represent the basic values cherished by the people of this country (India) since the vedic times and they are calculated to protect the dignity of the individual and created conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the state not to encroach on individual liberty in its various dimensions. However the children are also entitle to get and maintain their dignity and protect tender age or childhood.

II. CONSTITUTIONAL PROVISION REGARDING CHILDREN

There are some specific provisions related to children's rights and their welfare environment in our constitution. These are following:

Art. 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth: This article provides guarantee to equality without any discrimination.

(3) Nothing in this article shall prevent the state from making any special provision for women and children.

Art. 21: says “No person shall be deprived of his life or personal liberty, except according to procedure established by law. According to the Supreme Court that ‘life’ includes free from exploitation and to live a dignified life.

Art. 23: Prohibition of Traffic in human beings and forced labour: Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

This article embodies two declarations, first that traffic in human beings, beggar and other similar forms of forced labour are prohibited. The prohibition applies not only to state but also to private persons bodies and organisations. Second any contravention of the prohibition shall be an offence punishable in accordance with law. Traffic in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose with of. It would includes traffic in women and children. Beggar means involuntary work without payment. It is fundamental right of a person, citizen or non-citizen not to be compelled to work without wages.

Art. 24: Prohibition of employment of children in factories, etc.: No child below the age of fourteen years shall be employed to the work in any factory or mine or engaged in any other hazardous employment.

³ AIR 1978 S.C. 597

Art. 21-A Right to Education:⁴ The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may by law determine.

As we have seen above the Supreme Court in **Unni Krishnan Case**⁵ had clearly recognised the fundamental rights of every child for free and compulsory elementary education upto the age of fourteen years as provided in then Article 45. However, to ensure sufficient and effective realisation of this right as well as to reassert national will and commitment in this regard Article 21-A was inserted by eighty-sixth constitutional amendment in 2002.

Article 39: Certain principles of policy to be followed by the state:

The state shall in particular, direct its policy towards securing:

(e) That the health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength.

(f) Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.⁶

Art. 45: Provision of early childhood care and education to children below the age of six years.

The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Art. 51: Fundamental duties: It shall be the duty of every citizen of India.

(k) 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.⁷

III. UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

This convention was adopted by the General Assembly on 20th November 1989 and entered into force from 2nd September 1990. Article 28 of the convention provides right of the child to Education and further states a view to achieving this right progressively and on the basis of equal opportunity. Art. 32 provides rights of protection from economic exploitation and from performing any hazardous work or to interfere with the child's education or to be harmful to

⁴ This article was inserted by the constitution 86th Amendment Act, 2002.

⁵ *Unni Krishnan V. State of A.P.* (1993) 1 SCC 645

⁶ Subs. by the constitution 42nd Amendment Act, 1976.

⁷ Inserted by the constitution 86th Amendment Act 2002.

the child's health or physical mental spiritual, moral or social development. A number of rights have been stipulated in the convention which includes the following:

- (i) Right to life (Article 6 para 1)
- (ii) Right to acquire nationality (Art. 7)
- (iii) Right to freedom of expression (Art. 13 para 1)
- (iv) Right to freedom of thought, conscience and religion (Art. 14, Para 1)
- (v) Right to freedom of association and to freedom of peaceful assembly (Art. 15, Para 1)
- (vi) Right to education (Art. 28 para 1)
- (vii) Right to benefit from social security (Art. 26 para 1)
- (viii) Right to standard of living adequate for the child's physical mental, spiritual and social development (Art. 27 para 1)
- (ix) Right to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Art. 24 Para 1)
- (x) Right to protection of law against arbitrary or unlawful interference with his or her privacy, family, home or correspondence. (Art. 16 para 1)

There are two optional protocols to the convention on the Rights of the child, first protocol prohibits 'involvement of children in armed conflict and second prohibits the sale of children, child prostitution and child pornography'. These optional protocols were adopted by U.N. General Assembly on 6th March 2000 and both are signed by India on 15th November 2004.

The U.N. convention on the Rights of the child includes the rights for children to be protected from hazardous work. Children have the right to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfering with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.⁸

In 1993 a convention on Human Rights was held at Viena. The conference focused the attention to the four sets of civil, political, social, economic and cultural rights of the child:

1. The Right to Survival: Includes the right to life, the highest attainable standard of health, nutrition and adequate standard of living. It also includes the right to name and nationality.

⁸ Research Journal of Arts, Management and Social Sciences Vol. VI 2012. S.S. Das - P 228, 233.

2. The Right to Protection: Includes freedom from all form of exploitation, abuses, inhuman or degrading treatment and negligence including the right to special protection in situation of emergency and armed conflicts.
3. The Right to Development: Consists of the rights to education, support for early childhood, development and care, social security and right to leisure, recreation and cultural activities.
4. The Right to Participation: Includes respect for the views of the child. Freedom of expression, access to appropriate information and freedom of thought, consensus and religion.
5. Right to Education: Every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.

IV. NATIONAL INITIATIVE

Government of India has set up a statutory body, National Commission for Protection of Child Right, which has been approved by parliament on 29th Dec. 2006. Almost all states have adopted it. The United Nations Convention on child right provides Right to survival which includes the right to live the attainable standard of health, nutrition and adequate standard of living. It also includes the Right to a name and nationality. These rights seek to ensure that the children have nutritious food, portable drinking water and a secure home and access to health facilities. India has accepted U.N. Convention on Child Right in 1969. 'Childline' states that according to Government of India, right to survival begins even before the birth of child. A child life begins after 20 weeks of conceptions. Child Rights are to be born, right to minimum standard of food, shelter and clothing and the right to live with dignity.

At state level every state has setup a statutory body, **State Commission for Protection of child Right (SCRC)** for Protection, Improvement and Advancement of child rights. The main function of the commission is a implementation of the Rights of Children. The two main agencies, Juvenile Justice (Care and Protection of children) Act 2000 and Central adoption resource agency (CARA) are the agencies entrusted with protection of children. The commission for protection of child rights act and the protection of children from sexual offense bill, 2010 and the pre conception and pre natal diagnostic technique (prohibition of sex selection) Act 2002 are other legislative measures to protect the rights of children from exploitation.

The National Policy for children was adopted on 22nd August 1974. This policy lays down that the state shall provide adequate service for children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested in the policy include, amongst others a comprehensive programme, supplement nutrition for mothers and children, free and compulsory education for all children up to age of 14 years. Promotion of physical education and recreational activities, special consideration for children etc.

The Government of India adopted the National charter for children on 9th Feb. 2004. The National charter is a statement of intent embodying the government's agenda for children. The document emphasizes government of India's commitment to children's rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education. Protection of the girl child, empowering adolescents, equality of life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation and all forms of abuse. It also provides for protection of children in difficult circumstances, children with disabilities, children from marginalised and disadvantages communities and child victims.

Apart from these policies, various schemes for children like Integrated Child Development Services (ICDS) and Integrated Child Protection Schemes (ICPS) are functioning to protect the child right.

There are statutory and autonomous organization of the government of India which are working to protect the child rights from exploitation. The National Commission for protection of Child Right (N.C.P.C.R.) was setup on 5th March 2007 in accordance with the provisions of the act for paper enforcement of children's rights and effective implementation of laws and programmes relating to children. Its mission is to protect, promote and defend child rights in India.

V. RIGHTS OF A CHILD: MYTH OR REALITY

Although Governments are working and making their policies in the filed of child rights. Govt. has made many provisions relating to child rights. But it seems all the above measures are not sufficient because we still hear and see child being exploited in the street, home and school. Minor being held and detained under wrong murder charge, corporal punishment being given in the school, young and minor girls being disrespected, stripped, beaten and raped in the shelter homes and streets. The child is the father of man said William

Wordsworth but today it seems, that the child is the slave of man.⁹ Child Welfare is not a social responsibility but an environmental concern also. Problems with children all over the globe are mainly related to growing, human population, poverty, illiteracy and poor population migration. The hardship and deprivation of poverty fall most heavily on women and children. Some men take no responsibility of their women. Many married men under stress of poverty, abandon wives and children. Today according to some estimates about 20 million children are engaged in forced labour, child prostitution, begging and stealing. There are about 50,000 children working in Firozabad's glass factories. Begun with age of seven, they are likely to suffer lead poisoning through occupational exposure to lead fumes. In Moradabad brassware industries, chronic lung, muscle and bone disorders paid for earning their living to the child worker's. Female child in African countries suffer the higher risk of HIV infection. Increased criminal behaviour amongst children is observed by increased number of child prisoners living in jails. In most developing countries, rural children work with adult in the same field.¹⁰ The following pinpoints reveals the status of child and disclose the hollows provisions of child rights.

A) Child Labour - Child Labour is a serious, unavoidable universal and phenomenon since time immemorial. After 60 years of independence of our system does not ensure education for all. Out of 200 million children in the age group of 6 to 14 years. 5.9 million children do not attend the school in India. Africa and Asia together account for over 90 percent of total child employment. India is no exception. India has 12.7 million workers between 5 to 14 years. they make up 5 percentage of population and 3.15 percent of workforce. From 1991 to 2011, child labourers have increased up to 11.69 percent.¹¹ According to National Sample Survey Organization (NSSO) 2009-2010 there are 49.84 lakh child labourers are working in India. Children are employed in different hazardous and on occupation i.e. domestic helpers in dhabas and hotels, rag pickers, factory and shops, mechanics in motor workshops etc. Recently, (According to a report of Ambika Pandit from Nav Bharat Times (NBT), 23 June 2025 revealed that, from April 2024 to March 2025. Nearly 90% of the 44,902 children rescued from child labour in various sectors. Children rescued from cases of sexual exploitation and begging were second and third. Voluntary organizations and authorities worked together to rescue these children from their exploiters considering legal action as an important step to end child labour the report said that of the legal action taken in 27,320 campaigns, FIR were registered in 35% (9,595). In 2024-25, there are 11,409 missing children

⁹ G. S. Rawat - Status of child rights in Uttarakhand Souvenir, p. 49

¹⁰ Dr. J.V.S. Rauthan, Dr. Sundar Singh: Child and Environment, p. 31

¹¹ Dr. Geetali Padiyar, Child Labour in Garhwal Himalaya

were identified by civil society networks. Meanwhile 5809 employers and traffickers were arrested as part of these rescue operations.

B) Child Education Problems - The Right of Children to free and Compulsory Education Act, 2009, popularly known as the Right to Education (RTE) Act, came into being in India from April 1, 2010. Nevertheless this effort could not get its objects or achievement. 5.9 million children do not get its objects or achievement. 5.9 million children do not attend the school of India, out of 200 million children in the age group of 6 to 14 years.¹² 35 percent of population are stand below poverty line, they are unable to maintain their primary needs such as food, shelter and child education etc. 90% children are interested to attend the schools but their conditions are not allowing them because poverty is greatest discrimination factor, only 10% are not willing because they does not like to go school. According to Annual Economic Survey 2011¹³, there is no drinking water facility in 16.6% schools, 55% schools have not separate toilet for girls student. Besides this 60% schools does not fulfill the requirement of teacher and student ratio 1:30. Thirty percent of schools are deprived from basic requirement and facilities.

The data of UNESCO on 19 September 2023 shows that the global number of out of school children has risen by 6 million since 2021 and now totals 250 millions. The figures, compiled by the Global Education Monitoring, report and the UNESCO Institute for statistics, reveal that education progress continues to stagnate globally. As the UN General Assembly SDG Summit Reviews progress towards the 2030 Agenda, it is clear that countries must urgently take action to reverse this trend in order to meet their education objectives and commitments.

C) Problems of Malnutrition - India is an under developing country, a large number of population is there are incapable to get food and other basic needs. According to National Family health survey-3, forty percent children are low weight in India due to malnutrition and 45 percent children are suffering from malnutrition, their tender age and development has becoming endangered due to malnutrition.¹⁴ Globally, 17 million children under 5 years of age are affected with severe malnutrition. Severe wasting is a key contributor (12.6%) to child deaths due to the nutritional deficiencies and is responsible for several morbid condition. India faces a substantial proportion of disease burden when it comes to malnutrition. According to the National Family Health Survey (NFHS2022) It was observed that in rural Punjab 24.5%,

¹² Ibid

¹³ Hindustan Times, 15th August 2012, Articles by - Pooja Bhardwaj, Chief Executive Officer Child Rights & You.

¹⁴ Ibid

16.1%, 5.9% and 21.1% under five, children were stunted, wasted severely wasted and underweight respectively.

D) Sexual Harassment - Sexual harassment of children has become a serious problem, not only in India but also in world level. According to National Crime Record Bureau (NCRB). There are 5,485 children's rape case was registered in 2010 and 10,670 cases was registered in the matter of kidnapping. Besides this 120 murder case of children came in lime light in the same year.¹⁵ According to information given by E. Ahmed, Minister of state for Human Resource development the national commission for child right has received 116 cases related to abuse in school from Tamil Nadu and 105 cases from Delhi. There are estimated to be 9 lakh sex worker in India and 30 percent are believed to be children. Recent reports estimated that the number of children involved in prostitution is increasing at 8 to 10 percent per year. Most of the prostitution are below the age of 20 years.¹⁶

E) Gender Discrimination as Foeticide - A girl child is considered a burden since age, as we have seen in history. Though we have stepped into 21st century we seen even today girls are not welcome in our society. In states like Maharastra, Punjab, Gujarat, Haryana, U.P. and Rajasthan and even in Uttarakhand the sex ratio is going down, due to sex determination ultrasound. Girl Child Foeticide is a very serious issue to present time. The sex ratio in India stands at 933:1000 (i.e. for every 1000 male births, there are 933 female births). An analysis of fertility and mortality survey of 1998 estimates that about 0.5 million female births go missing yearly. These translate into approximately 10 million female fetuses getting aborted over the past two decades. The United Nation Children's Fund state that systematic gender discrimination has resulted in upto 50 million girls and women 'going missing' from India's population due to this heinous crime and other form of violence against women. The basic right to life of a girl child is questioned and violated even before she is born.

F) Other Exploitation - Breast feeding is crucial for the child survival right from the birth, colostrum (first milk) is fully nutrition and protection for New baby. According an estimates that 20 percent cases breastfeeding was not initiated within one hour. Around 30% children were not exclusively breastfed according to Integrated Management of Neo Natal Childhood Illness (IMNCI) guidelines. 07 out of every 100 children born in India die before reaching age one, and approximately 05 out of every 1,000 mothers who become pregnant die of causes related to pregnancy and childbirth.¹⁷

¹⁵ Ibid

¹⁶ Smriti: The Problem of Child Prostitution in India: The Human Rights Perspective, p. 54

¹⁷ Dr. Umam Farooq: Deptt. S CCSP Aligarh, A.M.U., Aligarh.

In the early years of research on street children the term street child included any child that worked on the street. While 18 million children work on the street of India. It is estimated that only 5-20 percent of them are truly homeless and disconnected from their families. The education of street children in India, is very poor and often non-existent. For example only in Bombay in 1989 found that 54.5% had never been enrolled in school and 66% of the children were illiterate. In 2004 in Bombay 60% of the children had never attend school and approximately 2/3 were illiterate. A study conducted in 2002 on the street children in Kolkata found that 6 in every 554 street children from age five to fourteen HIV positive.¹⁸

VI. CONCLUSION AND SUGGESTIONS

It seems all the cited above provisions relating to child rights are not basically sufficient because we still hear and see child being exploited in street, home and school. Children are still deprived from education and suffering from Malnutrition, Foeticide, Kidnapping, in human traffic, begar, forced and bounded labour, Coercion, Sexual harassment such as rape and prostitution, mental and physical tourcher and many other abuses. Minor being held and detained under wrong murder charge, corporal punishment being given in the school. Young and Minor girls being disrespected, stripped, beaten and raped in shelter homes, streets and work place. Besides this children are also suffering from the negligence behaviour of their parents. A child as young as five years begins to help his mother in family chores. These children are treated as economic assets in family. Some peoples wants that their ward could earn some amounts of money. So they sent their ward in the way of child labour. In India the first children act was made in 1960 and then labour acts and many more acts came into existence but none could improve the situation of child.

Unless the laws on child right are implemented properly and seriously no desired results are possible. To check child laws abuse required working on various fronts with different angles taking local socio-economic conditions and traditions in considerations. These issues are of social changes hence need public mobilization, participation of masses in such programmes and a form determination on the part of government to eradicate abuses of child right with a form determination. If we want a better world we have to ensure that rights of our children are protected at any cost because they are our future. They will make our society, our country livable for us and future generations. Therefore, let us join hands in protecting children from every kind of exploitation.

¹⁸ Gopal Singh Bisht: Street Children and Child Rights