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# Parents Patriae and Right to Health with Special Reference to Neonatal Health

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M. CHIDAMBARAM<sup>1</sup> AND DR. SUMANA VEDANTH<sup>2</sup>

## ABSTRACT

*The right to life is the most fundamental human right, and it applies equally to newborn babies. In India, there are a number of legal safeguards that protect the right to life of newborn babies, including Article 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act, 2015. The Supreme Court of India has also recognized the right to life of newborn babies in a number of cases. Despite the legal safeguards and court decisions, there are still a number of instances where the right to life of newborn babies is violated. Some of the most common violations include infanticide, neonatal neglect, and abandonment. The government and civil society people organizations need to work together to create a safe and healthy environment for all newborn babies in India. This can be done by raising awareness of the rights of newborn babies, providing support to families with newborn babies, and ensuring that the law is enforced effectively.*

**Keywords:** *Right to Health, Deficiency of Public Health, Judicial Interpretation, Neonatal care, Human Rights.*

## I. INTRODUCTION

The right to life is the most fundamental human right. It is a right that is inherent in every human being, regardless of their age, sex, race, religion, or any other factor. Newborn babies are no exception. They have the same right to life as any other human being. There are a number of legal safeguards that protect the right to life of newborn babies in India. One of the most important safeguards is Article 21 of the Constitution of India, which guarantees the right to life and personal liberty to all persons. This means that no one, including the government, can deprive a newborn baby of their life without due process of law. In recent years, increasing attention has been paid to the right to the highest attainable standard of health, for instance by human rights treaty monitoring bodies, by WHO and by the commission on Human Rights (now replaced by the Human Rights council), Which in 2002 created the mandate of Special Rapporteur on the everyone to the highest attainable standard of physical and mental health which also include the neonatal health.

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<sup>1</sup> Author is a Research Scholar at School of Law SRM University Chengalpattu, India.

<sup>2</sup> Author is an Associate Professor at School of Law SRM University, Chengalpattu, India.

However, unfortunately infant babies are dependent on adults for their well-being which does not lead to a good end in many cases especially in India where implementation of law has always been very average such that new born babies are at a high risk of their rights being violated with the rise of infant right violation in the recent years.

## **II. Human Rights Approach with Pregnant women**

A new born child under 28 days of age during these first 28 days of life, the child is at highest risk of dying in world. Moreover we need care at birth, care during the first day and care up to 28 days. Pregnant women and child both are improve the child's chances to survival and to lay the basic foundation for a healthy life. A human rights approach to pregnant women health care is one of the importance of respecting and protecting the fundamental rights of new born babies and their pregnant women.

A human rights approach recognize that decisions regarding new born care must and best interest of the child. This involves and considering only not their physical health but also their emotional well-being and long-term purpose prospects.

### **(A) Legislative measures**

Government implement new type of schemes introduced among the all states of people especially in rural area. Moreover the government of Tamilnadu introduced and provide free the morning free food and afternoon free food in government school. This is one of the record in Tamilnadu as well as the urban city functioning of Amma government hotel provide nutrition food of the healthy and wealthy food reached to all people in state. Including egg and vegetable food also provide under Amma hotels. The government give suggestion instruct to add the good healthy vegetable cook in the hotels. Then what are the vegetable are available in cheapest in market and buy cook the quality of food provide to people in surrounding area. Through the ration shop small scale industry of product of small grain provide to all the state in our country. In market also cheapest rate of price of small grain sale or distribute to the people in India.

The government allocate the proper fund for health and schemes and policy introduced in the legislation of state and promoting awareness of what type of nutritional foods taking during the pregnant women rights and healthcare options is crucial parents should be educated about their child's health and their own rights within the healthcare system. The government duty to provide essential maternal health care services and the court ordered the local and central government to take various remedial measures to address the inadequacies in pregnant women health care services.

### **III. INSTANCES OF NEW-BORN INFANT'S RIGHT VIOLATIONS IN INDIA AND RELATED STATISTICS**

Infants in India are vulnerable to a number of rights violations, including infanticide, neonatal neglect, abandonment, sexual abuse, and child labour.

#### **(A) Infanticide**

Infanticide is the intentional killing of a newborn baby. It is a punishable offence under the Indian Penal Code (IPC), but it remains a prevalent practice in some parts of India, particularly among female babies.

According to the National Crime Records Bureau (NCRB), there were 4,039 cases of infanticide reported in India in 2017. Of these cases, 92.8% of the victims were female babies.<sup>3</sup>

#### **(B) Neonatal Neglect**

Neonatal neglect is the failure to provide a newborn baby with the basic necessities for survival, such as food, water, shelter, and medical care. Neonatal neglect can lead to the death of the baby.

According to the National Neonatology Forum of India (NNFI), an estimated 10 million newborn babies die in India every year, due to factors such as neonatal neglect.<sup>4</sup>

#### **(C) Abandonment**

Abandonment is the act of leaving a newborn baby unattended, with the intention of never returning. Abandonment can also lead to the death of the baby.

According to the National Commission for the Protection of Child Rights (NCPCR), an estimated 20,000 newborn babies are abandoned in India every year.<sup>5</sup>

#### **(D) Sexual Abuse**

Sexual abuse of infants is also a serious problem in India. According to the NCRB, there were 1,818 cases of sexual assault on children under the age of six reported in India in 2017.<sup>6</sup>

#### **(E) Child Labour**

Child labour is another major problem in India, and it can have a serious negative impact on the rights of infants. According to the International Labour Organization (ILO), there are an

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<sup>3</sup> NCRB, "Crime in India 2017: Statistics," 2018

<sup>4</sup> "Neonatal Mortality in India: A White Paper," 2020.

<sup>5</sup> NCPCR, "Abandonment of Children in India," 2019.

<sup>6</sup> NCRB, "Crime in India 2017: Statistics," 2018.

estimated 4.9 million child laborers in India.<sup>7</sup>

These are just a few examples of the many ways in which the rights of infants are violated in India. It is important to note that these violations are not limited to any particular region or community. They can occur anywhere, and they can affect infants from all walks of life.

#### **IV. LEGAL FRAMEWORK: INDIAN PERSPECTIVE OF RIGHT TO HEALTH AND RIGHT TO LIFE**

The Indian Constitution and a number of other laws protect the rights of newborn babies. Some of the most important laws include:

##### **(A) Constitution of India, 1950:**

Article 14 of the Constitution guarantees the right to equality before the law and equal protection of the laws to all persons, including newborn babies. This means that newborn babies cannot be discriminated against on the basis of place of birth, caste, religion, sex, or any other ground.

##### **(B) Right to health:**

Article 21 of the Constitution of India also guarantees the right to health to all persons. This means that newborn babies have the right to access quality healthcare services.

Indian constitution has very clearly and specifically stated 'Protection and fulfillment of right to health for all – right to life, equality and non- discrimination'. The right to health necessity of health care should be available, accessible, affordable, and of optimal quality to all. The Indian constitution makes it mandatory for the state to ensure fulfillment of the right to health for all without and discrimination under Article 14,15, and 21 (right to life, equality, and nondiscrimination). This automatically leads to the understanding that the nation must Respect, protect, Fulfill, and Guarantee Human rights without discrimination based on caste, class, creed or sex. Part- IV of the constitution under the Directive principles of state policy (DPSP) ensures social and economic justice to its citizens and the constitution directly or indirectly relates to public policy in terms of health. Article 38,39,42,43, and 47 put the duty on the state in order to ensure the effective awareness of the right to health. Right to health refers to and means the most attainable levels of health that every human being is entitled to the origin of the right to health dates as far back as 1946 when the first international organization, World Health Organization (WHO) came into existence to formulate health terms as human rights.

Whereas the right to health can be regarded as part of human rights and applicable to all,

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<sup>7</sup> ILO, "Global Estimates of Child Labour: Results and Trends, 2000-2020," 2021.

children constitute the most neglected segment having been denied adequate health care. Moreover, children are totally dependent upon adults for all of their needs. They have no control over adverse health events, proper nutrition, sanitation and environment. In the absence or a lack of adequate parental care, the State must be responsible to meet their health needs by making child-centric policies and sufficient allocation of funds. Indian judiciary has addressed several issues that include work in hazardous situations, bonded labor, and employment of children below the age of 14 years. The Supreme Court of India has ruled that the health is the fundamental right of workers. However, health care of children has not received sufficient attention.

Article 21 of the Constitution of India guarantees the right to life to all persons, including newborn babies. This means that the state has a duty to protect the lives of all newborn babies.

**(C) Juvenile Justice (Care and Protection of Children) Act, 2015:**

Section 3(1) of the JJ Act defines a "child" as a person who has not completed the age of eighteen years. This means that newborn infants are included within the definition of "child" under the Act and are therefore entitled to all the rights and protections provided under the Act.

Section 75 of the Act prohibits all forms of child abuse, including physical abuse, neglect, medical abuse, sexual abuse, and emotional abuse. This means that anyone who violates the right to life of a newborn baby can be prosecuted and punished under the JJ Act.

**(D) Protection of Children from Sexual Offences Act, 2012:**

This Act prohibits sexual assault of children, including newborn infants. This means that any person who commits sexual assault on a newborn infant can be punished with imprisonment for a term of ten years to life.

These are just a few of the laws that protect the rights of newborn infants in India. There are many other laws and policies that are relevant to the protection of child rights, such as the National Child Labour Policy, 2013 and the Integrated Child Development Services (ICDS) Scheme.

## **V. SOME RELEVANT COURT DECISIONS**

### **1. Court on its own motion, In Re<sup>8</sup>:**

- a. Facts: The High Court took suo-moto cognizance of a newspaper report regarding a pregnant girl who had tested positive for coronavirus.

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<sup>8</sup> 2020 SCC ONLINE TRI 254, Tripura High Court, 2020

- b. Ruling: The court ordered that the girl be brought back to her home state after she is cured of the virus and her quarantine period is over. The National Commission for Protection of Child Rights was directed to coordinate with the state commissions to ensure the safety and well-being of the child.

**2. National Commission for protection of Child Rights and others v. Rajesh Kumar and others<sup>9</sup>:**

- a. Facts: The case involved a dispute over the jurisdiction of the National Commission for Protection of Child Rights in a child protection matter.
- b. Ruling: The Supreme court of India held that the jurisdiction of the National Commission is not barred under Section 13(2) of the Commissions for Protection of Child Rights Act, 2005. The court allowed the commission to proceed with the case.

**3. Baby Manji Yamada v Union of India and another<sup>10</sup>:**

- a. Facts: The case dealt with the issue of surrogacy and the rights of a child born through surrogacy.
- b. Ruling: The Supreme Court held that recognized surrogacy as a valid method of reproduction and child's best interests should be the primary consideration in such cases.

**4. Sampurna Behrua Petitioner(S) v. Union of India & Ors.**

- a. Facts: The case involved the appointment of chairpersons and members of State Commissions for Protection of Child Rights in various states.
- b. Ruling: The court directed the state governments to complete the process of appointment of chairpersons and members of the State Commissions within a specified time frame.

**5. Alarming uprise in the number of Reported child rape incidents,**

- a. Facts: The case was a suo-motu writ petition addressing the issue of child rape incidents in India.
- b. Ruling: The court directed various states to file their responses and take necessary actions to establish Human Rights Courts and appoint Special Public Prosecutors for cases related to child rape.

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<sup>9</sup> 2018 SCC 16 1, Supreme Court Of India, 2018

<sup>10</sup> 2008 SCC 13 518, Supreme Court Of India, 2008

## **VI. WHAT INDIA LACKS WHEN COMPARED TO OTHER COUNTRIES?**

India has a number of laws in place to protect the rights of newborn babies. However, the implementation of these laws is often poor. As a result, newborn babies in India are still high risk of rights violations.

In comparison to other countries, India has a relatively high rate of infant mortality. India also has a high rate of child marriage and child labor. These are all indicators of the violation of the rights of newborn babies.

In comparison to other countries, India has a relatively comprehensive legal framework for the protection of the rights of newborn babies. However, there are still a number of areas where the framework can be improved. For example, the JJ Act does not explicitly recognize the right to life of newborn babies. Additionally, the POCSO Act does not explicitly recognize the right to privacy of newborn babies.

## **VII. CONCLUSION**

The violation of the rights of newborn babies is a serious problem in India. There are a number of laws in India that protect the rights of newborn babies, but the framework can be improved in a number of areas. The government and civil society organizations need to work together to create a safe and healthy environment for all newborn babies in India.

It is also important to note that the rights of infants are not just the responsibility of the government. Parents, caregivers, and society as a whole have a role to play in protecting the rights of infants. We all need to work together to create a safe and healthy environment for all infants in India. The most of the court order significant for its recognition of the right to health as a constitutional right and for establishing the state's understanding the circumstances and liability to provide adequate healthcare service to population in India. Nutritional foods for pregnant women care is critical component overall public health and a vital Investment in the welfare of our future generations. Ensuring the health and well-being of nutrition foods and pregnant women is shared responsibility that involves governments, health providers, communities, and families. It's one of the foundation for healthier, more prosperous societies and a brighter future for our children.

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