

Child Rights In India: Issues And Challenges

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Abstract:

The children are the supreme asset of any nation; they are the greatest gift of humanity and a very important segment of human society. But unfortunately child has been exploited and discriminated every day in every society. Children working as labourers have been found as the cheapest and most disciplined labour. They can be found working in homes doing household chores, in factories (sometimes even in hazardous factories), fields, hotels, restaurants etc. Children are generally made to work under unhygienic conditions for long hours and the wages paid to them are generally very low.

Sometimes children are also exploited by their own guardians and parents. Both boys and girls are being exploited sexually, physically as well as emotionally. The children who are illegitimate or orphans or children of people who have stigma attached to their reputation such as prostitutes and under trials are further exploited and looked down by the society. For strangers with perverted mentality children are the easiest victim of sexual abuse. Children are also abused for organ & flesh trade

Keywords: child rights, work, exploitation, development and education

Introduction

Children are the nation's most important asset and future resource of manpower for the development of the country. They constitute the core of human society. It is their development, which sustains the society. Their development with dignity is a matter of great concern throughout the world.

Children are most vulnerable group of any society, on account of their weakness, vulnerability and dependence; they are being exploited, ill-treated and directed into undesirable paths by anti-social elements. The State thus has the duty to provide proper protection to the children all the times. The State in order to achieve this goal has enacted various enactments from time to time, to prevent crime against the children and to protect their rights.

Childhood is a universal human experience. In every child, the foundation of a nation is laid. The proper development of the child is, therefore, imperative for the proper growth of a nation. The protection and welfare is of utmost importance to the society.

The New Concept of Child

Generally a person is treated as child up to the age of fourteen years from where the period of

youth starts. Child by an adjective phrase means a person who is unable to maintain itself. However, nations in November, 1959 defined children as individuals up to sixteen years of age. The various stages of childhood which have recognized are the parental, the post natal, infant(0-1 year), the pre-school Pre-school from (3 to 6 years) and school stage (6 to 16 years)

In India, concept of children under various laws laid down different meaning for different age groups. protection from criminal liability is available for child below the age of seven in Indian Penal Code . He may not be held criminally responsible for an act committed by him.

Definition of child under various provisions of Law

'Child' as per Immoral Traffic (Prevention) Act, 1956; means a person who has not completed the age of sixteen years;

As per the Juvenile Justice (Care And Protection of Children) Act, 2000 'Juvenile' or 'child' means a person who has not completed eighteen years of age.

As per the Child Marriage Restraint Act, 'Child' means a person who has not completed the

age of twenty one years if male and if a female has not completed the age of eighteen years.

'Child' as per the Child Labour (ProhibitionAndRegulation) Act, 1986 means a person who has not completed his fourteen years of age.

The Minimum Wages Act defines 'child' who has not completed the age of fourteenth years.

Minor is used as synonymous of child in various acts like Indian Contract Act and Code of Criminal Procedure. The provisions of the Factories Act, The Mines Act, 1952 and The motor Transport Workers Act, 1961, The Employment of Children Act, 1932. The Plantation Labour Act, 1951 have taken the age of fourteen years and sixteen years of a person for considering the person to be child.

As per the provisions of The Child Labour (Prohibition and Regulation) Act, 1986 child is a person who has not completed fourteen years of age. Under The Factories Act, 1948 and Plantation Labour Act 1951 the concept of child is that who has not completed fifteen years of age and an adolescent is one who has completed 15 years of age but has not completed 18 years of age.

Adolescents are allowed under Factories Act to work in factories as long as they are deemed medically fit but May not for more than four and half hours a day. The Motor Transport Workers Act 1961 and The Beedi and Cigar Workers (Conditions of Employment) Act 1966, both define a child as a person who has not completed fourteen years of age. The Merchant Shipping Act 1958 and Apprentices Act 1961 don't define a child, but in provisions of the act state that a child below fourteen is not permitted to work in occupations of the act.

The Mines Act, 1952 is the only labour related act that defines adult as person who has completed eighteen years of age (hence a child is a person who has not completed eighteen years of age).

The Prohibition of Child Marriage Act, 2006 (Prohibition-of-Child-Marriage-Act-2006.htm) states that a male has not reached majority until he is twenty-one years of age and a female has not reached majority until she is eighteen years of age.

Under the Indian Majority Act, 1875 a person has not attained majority until he or she is of eighteen years of age. Under the provisions of Hindu

Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956 the concept of child is same.

From the perusal of definition of child under various Acts it reveals that age is paramount consideration to see whether a person falls within the category of child or not. It is said that when there is a mind at fault against the children the crime can be committed against them. But this principle is not an inflexible rule, and a statute may relate to such a subject matter and may be so formed as to make an act criminal.

Indian census 2011 reveals some shocking data about our child(0-6 years) population. Child population in India has decreased whereas overall population has increased about 17.64% in last 10 years. Something that is alarming is the sex ratio of children under 6 years of has dropped to just 914 girl child per 1000 boys. Both rural and urban India has the same negative change.

Total number of children in the age-group of 0-6 years are 15,87,89,287(158.8 million) in India. That is 50,48,108 (5 million) less than 2001 census. Among them 11,75,85,514 children live in rural India and 4,12,03,773 children live in urban India.

Problem of the study:

Unfortunately even today millions of children in the metropolitan slums are growing in an environment of crime and drug abuse. Nobody cares about them. Ignored and neglected children's is nothing but wasting of supreme national asset. Many of them, if properly groomed may occupy various vital and useful positions in all wakes of life in future. If we neglect and do not provide or meet their bare needs of food, health and education, heavy price will have to be paid in future. Neglecting and ignoring the welfare of children and their all-round development may create suffocating atmosphere for the country.

Objective of the Study: In the light of above introduction researcher has following objectives namely:

1. To study the various provisions of Indian Constitution relating to Child Rights
2. To focus responsibility of the State to protect child rights, and provide for free education.

3. To study and analyse various judgments of Indian Supreme Court of India

Significance Of The Study:

The Indian Constitution guarantees certain fundamental freedoms and rights to its citizen under chapter III. It guarantees 'Right to Life and personal liberty to all persons' under Article 21 of the constitution of India. The Supreme Court declared right to education as a fundamental right and is available to every child in India. Indian judiciary is playing significant role while interpreting the provisions of the Constitution taking into account the International Mandate on rights of children.

Scope Of The Study:

In this present research, researcher focused on the Constitutional provisions and International mandate related with child rights including right to free and compulsory education and interpretation of these provisions by the Supreme Court of India. The fundamental rights, directive principles of state policy and fundamental duties are laid down for protection of child rights. The scope of the study was limited to the Constitutional Provisions and Judicial response to child rights and right to education. The Researcher has studied and analyzed various decisions of the Supreme Court.

Hypothesis:

The Role of Indian Judiciary is Significant in Interpreting Constitutional Provisions and mandate of International Institutions Regarding child Rights and Constitutional Duty of the State as defined under Article 12 of the Constitution of India.

Materials And Methods:

Law lays down certain norms and standards for human behaviour in a specified situation. Doctrinal research involves analysis of case laws, legal propositions and study of legal institutions national and internationally. The objective and philosophy of this present doctrinal research is sociologically is a social engineering through law. In this present research researcher has relied upon various research articles, Supreme Court Cases. for doing research in the present subject researcher have adopted following Methods

1. Study of laws, Provisions etc.

2. Analysis of Supreme Court Cases on child Rights.

3. To make search through various relevant books, journals and internet

The graph shows child population in rural and urban India from 1961 census to 2011 census.

Child population graph in India from 1961 to 2011 13.12% of the population in India is between 0-6 year of age. This is also 2.8% lower than last census. Meghalaya has the highest 18.75% child population of its total population among the states of India. Next is Bihar with 17.90% 0 to 6 year's child population. Tamilnadu, Goa & Kerala are the bottom three states where child population is about 9.5% of its total population.

Constitutional And Legal Rights Of The Child

In present days there is a growing concern about the rights of children and recognizing the need to protect them from neglect and abuse is gaining momentum throughout the world. It is also being realized that children are the potential and useful human resources for the progress of the country

In India, Right to free and compulsory education for all children between the ages of six to fourteen is guaranteed by Article 21 (A) of the Indian Constitution which states that the state should provide early childhood care and education to all children below the age of six is mandated by Article 45. Article 51(k) inserted in part IV-A of the constitution by amendment which cast fundamental duty on the parents/guardians of the children between the ages of six and fourteen to provide them with opportunities for education.

The population of children below the age of 6 years was 157.86 million, accounting for 15.24% of the country's total population. In all children constitute 42% of total population of the country. For a healthy and prosperous nation the holistic development of a child needs to be of great concern in their interest and in the interest of the country.

Children are innocent, vulnerable and dependent upon elders. Abandoning them and excluding them from good foundation of life for them is a crime against humanity. The future wellbeing of a nation depends upon as to how the children grow and develop. The children need special legislative measures to protect them from exploitation and

abuse and to save them from certain liabilities and to develop their personality in view of their weak position.

Article 14 & Article 15 of the constitution of India mandates the state not to discriminate on any ground as laid down in it. Article 2 of United nations conventions on child rights, 1989 laid down detailed provisions for giving respect and ensure each child within their countries. The committee on the rights of the child during the 35th session has considered the reports submitted by India as one of the state parties under Article 44 of the Child Rights Convention. For the implementation of the Convention (CRC) 5 Indian government for providing for free and compulsory education to all children 6-14 years old, and to further give effect to this right, the Central Government introduced the Right of Education Bill. However the clause relating to 25 per cent mandatory reservation to backward class of students in the age group of 6-14 is not well received by private schools.

In India at the Domestic level a good effort has been made for uplifting the position of the child. The consciousness relating to child rights and welfare is also reflected in some of the provisions of Indian Constitution.

Constitution of India enables the State for making special provisions for children under Article 15 (3). Also provides fundamental right to free and compulsory education for children of 6 - 14 years of age. Article 23 of Constitution of India laid down Provision about Traffic in human beings, beggar and other similar forms of forced labour. They are prohibited and any contravention of the provisions is now an offence in India.

Children below the age of fourteen years are not allowed to work in any factory or mine or engaged in any hazardous employment. Article 39(e) provides that the State shall direct its policy towards securing that the tender age of the children are not abused and the citizens are not forced by way of economic necessity to avocation unsuited to their age or strength.

The Constitution of India enshrines both in Parts III & IV the causes and best interest of children under articles 15(3), 24, 39(e),(f), 45 and 51-A(k). The National Policy for Children, 1974 was constituted for providing adequate services to

children, both before and after birth and throughout the period of growth to ensure their full physical, mental and social development,

Judicial Response To Child Related Laws

The Indian Supreme Court has been continuously by order making lives of numerous children better, who were object of exploitation. In *Bandhua Mukti Morcha Vs. Union of India*. The Supreme Court observed that right to live with human dignities is a basic human right enshrined in Article 41 and 42 of Directive Principles. Court also held that though the Directive part is not enforceable state must include protection to the children against abuse, opportunities and facilities. There are the minimum requirements which must exist in order to enable for children to live with human dignity.

In *Rosy Jacob Vs. Jacob A. Chakramappal*, the Supreme Court observed that children are not mere chattels nor are they mere playthings for their parents. Every child in the country has a legitimate, claim and is entitled to its share in the finances of the republic for harmonious and comprehensive development of its personality. There is a need to enhance share in the budget for the development and welfare of children in their interest as well as in the interest of the nation, children are delicate they need protection, nourishment and proper environment to grow into a useful citizen and help in the national progress. Proper health, education and environment are the imperative needs of the hour. Spending money on child education is not an expense on public exchequer but is an asset in the long run.

As per census 2011 About 42 million children in the age group of 6 to 14 do not have access to basic education, female education has been hampered by deep-rooted cultural prejudices and lack of concern towards girl child. As per the statistics provided by UNICEF out of India's seven lakhs rural primary and upper primary schools only one school out of six have toilet which deters the girls in attending school.

The Government is not at all sensitive to the issue of children in respect of education. The Education Bill which was mandated by Article 21-A of the Constitution, which lays down that the States shall provide free and compulsory education to all children has not seen the light of the day.

If the Government is genuinely serious about the eradication of child labour it should immediately implement, right to education and all other means to develops their physical and mental capabilities during childhood as child labour and child education go hand in hand.

It is unfortunate that over the years after attaining independence, gradually, three evils names cast, crime and corruption are tending to become cancerous, seriously affecting governance and development of the country. It is imperative and urgent to prevent them from getting deep rooted and this can be done by the people of competence, character, compassion and concern in all walks of life especially governance at all levels.

People with these qualities can make grow the children of today who are made to possess the qualities of truth, charity righteousness and love. And it is better expedient and convenient to infuse these qualities in the children from the beginning so that the future of the country can be safe in their hands.

After attaining freedom, founding father of the Constitution thought that the goal of universal elementary education could be achieved within ten years as provided in Article 45 but for the five decades this dream could not be realized. However, Supreme Court in Unni Krishnan vs. State of A.P. elevated directive principles under Article 45 to the status of fundamental right to dignified life under Article 21. It is observed by the court that the reasons for the continuance of this state of affair are lack of effective drive for compulsory education.

Conclusion:

Central government introduced various schemes such as SarvShikshaAbhiyaan, mid -day meal and operation Blackboard has been taken up so that school dropout rate is reduced. But it must be assured that these policies and programmers are continuous and not momentary, as the education of child is inextricably linked to the progress of a country.

To conclude, it may be pointed out that despite numerous laws enacted both at center and state level for children. The effective implemented of these laws is missing. In fact to-date in our country there is no single legislation for dealing exclusively

with all type of problems of child exploitation and child abuse. In existing statutes most of the legal provisions are merely idealized postulates and far from reality, due to peculiar socio-economic structure of our country. It is only a dream to provide necessary facilities and protection to the children. In fact, a large number of children of tender age are exposed to labour and are abused by employer and their own parents, who want their children to seek employment to augment the income of their families and to expose them to the work which is not suitable to their age.

In India the aspect of Child Rights and Child Abuse has not been addressed adequately. Apart from this in the recent past issues relating to that of health and education and general wellbeing of the children have received the focus and attention of the various officials and public authorities but in practice a lot is yet to be done.

For that there is a need to make people aware about, rights of children and as to the importance of their growing as responsible and productive citizens. In this regard media, non-governmental organizations and educational institutions can play a vital role.

Voluntary organizations could be powerful means of social communication in promoting Child Rights & Preventing their Abuse and Exploitation.

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