

Child Rights in India: Retrospect and Prospect



Naveen Kumar
Research Scholar,
Deptt. of Law,
University of Lucknow,
Lucknow

Harish Chandra Ram
Assistant Professor,
Faculty of Law,
University of Lucknow,
Lucknow

Abstract

The growing recognition to protect and nurture children and their rights is widely accepted today. In the Indian context at least, such thinking is not new. The drafting members of the Indian Constitution incorporated child rights and protection measures within the Indian Constitution, accepting children as a special group of vulnerable. Furthermore, it becomes essential for the well-being of the nation to have healthy and educated children who will grow up to be responsible citizens and provide human capital for the country in the form of a vibrant labour-pool, taking forth the economic aspirations of the country. Hence, ensuring the welfare of children should not be seen as a purely humanitarian gesture but also as a prudent investment for future returns for the country in general. This paper analysis the socio-legal aspects and child rights in India.

Keywords: Child Rights, Indian Constitution, Humanitarian Gesture and Human Capital.

Introduction

Before reflecting on the overall status of children in India, it must be noted that the word itself remains contested in India (in terms of its upper age limit), defined to suit policy purposes based upon differing situations. As per international standards stated in the United Nations Convention on the Rights of Children (UNCRC), 1989, individuals below the age of 18 are considered to be children. Considering India was one of the first few countries to ratify the Convention, it would have been only natural to reach a consensus regarding the upper age limit of children and consequently initiating processes to amend all the laws pertaining to children and synchronizing them with the definition of a child as per international norms. However, no such actions have been taken yet.

The two important laws that came into existence following the UNCRC, 1989- the Right to Free and Compulsory Education Act, 2009 (through the 86th Amendment in the Constitution) and the Juvenile Justice (Care and Protection of Children) Act, 2000, both set different age bars to be considered a child, further adding to the confusion. Disparities in the definition include- definitions in the census (undertaken every 10 years) which considers any person below fourteen years to be a child, similar to the Child Labour (Prohibition and Regulation) Act, 1986, while Section 28 of the Indian Penal Code (IPC) states that no child below age seven may be criminally held for his actions. The Juvenile Justice (Care and Protection of Children) Act, 2000 however defines a child to be any individual below the age of 18, much similar to the Indian Majority Act, 1875.

Having thus stated at the outset the confusion rampant among policy-makers as to who shall be considered a 'child', we proceed to state the objectives of this paper. While the topic 'rights of children in India' can be analysed through multiple lenses, this paper focuses on providing a broad overview of those children who are entirely dependent on state institutions for their well-being, reflecting upon their status and how the state is failing in its duties to protect and nurture them. We particularly focus on the two biggest programmes in India that currently cater to nutrition and educational needs of children- the Integrated Child Development Scheme (ICDS) and the Sarva Shiksha Abhyan (SSA). However, nutrition and education is not alone sufficient to protect the child, especially in a context characterised by entrenched poverty, class and caste hierarchies, gender disparities and dysfunctional state mechanisms. Hence, the paper briefly touches upon issues of child labour, human trafficking, physical and sexual abuse and discriminations based upon gender, religion, caste and class as it progresses. The objective of the paper is also to update the reader on the growing incidences of violations of rights of children and the complete absence of protection measures,

regulatory frameworks and state responsiveness to curb atrocities against children.

As per the current Census data, 39% of the population in India falls within the age bracket of 0-18. Considering the large population of India, if almost 40% of the population is children, then providing adequate nutrition, education, healthcare and ensuring necessary safety nets is not a matter of choice but rather absolute necessity. The social development indicators for children (discussed in details later) provide a further gloomy picture, calling for urgent re-strategising with respect to children and child protection measures; and introspection of the manner in which we are currently protecting and providing for our children. It is obvious that presence of unhealthy and uneducated adults in the next decade will just add unnecessary burden upon the already fragile state machineries. Considering that very soon India will overtake China in terms of population to become the most populous country on the globe, the expected demographic dividend may very well turn into a demographic nightmare for the country.

It is important to understand that legislation alone does not guarantee realisation, meaning, laws do not guarantee adherence to the laws. Implementing agencies and monitoring mechanisms must be created to ensure that the laws are abided by and in case they are not, stringent sanctions must be put in place. The second important thing that goes unnoticed is the role of every citizen in the society to ensure the successful enactment of its laws. As citizens bound by common laws, it becomes the duty of every individual to consciously abide by the law and report instances of violations. However, when it comes to children, it is almost as if we have developed certain blind-spots to visuals of child-rights violations. Therefore, most of us are indifferent when we see children selling plastic toys and books on the traffic signals, heavily malnourished children with protruding bellies (often carrying their infant siblings) begging for food on the road, or read news reports of incidences of maltreatment in schools, physical and sexual abuses where children are victimised, adolescents being trafficked from small villages into big cities and so on. These children just become numbers, cases and incidences adding to the worsening pile of social development indicators.

What is even more disturbing is the romanticised notion we tend to attach to the term childhood, a term generally associated with adjectives like innocence, carefree, happy and so on. While normative principles associated with the period of childhood cannot be dismissed, it will be prudent to analyse the contextual challenges faced by children (at least a majority of them) on a quotidian basis. In a country like India that is rooted with hunger, poverty, exploitation and abuse, the term hardly holds any positive connotations, especially for a majority of Indian children.

Objective of the Study

1. To really the different provisions of constitution and their relevance in contemporary India

2. To contextual the law relevancy to child right them need economic based new and under law the manful discourse.
3. To explore under the international legal frame and national legal frame with reference to child right.

Child Rights: What Are Our Legal Obligations

We are just a decade away from celebrating 100 years of the Geneva Declaration of the Rights of the Child, 1924 that emphasized the role of the present generation towards the future generation, explicitly stating how 'mankind owes the Child the best it has to give'. The evolution of rights, however, has not been an easy process. The concept of rights has always been a process of expansion in history, its scope expanded over decades to incorporate sub-groups of the population (bit by bit), sometimes through massive campaigning and movements while at times through violent rebellions.

Historically, the first documented evidence of Constitutional rights have been found in the Code of Hammurabi (1772 B.C.E), which granted certain rights (like presumption of innocence for the accused and the right to present evidence before a judge) to the citizens of Babylon (Chong, 2014). It was perhaps the first time when people were seen as more than mere subjects with just duties towards the ruling elite. While this was the beginning of bestowing rights to people, over decades, the notion of rights underwent different phases- adapted by the Greeks, Romans; King John of England before entering entered the constitutional frameworks of many western countries (Chong, 2014). The modern conception of human rights that believe all human beings possess some inherent 'natural' rights (from the philosophies of essentialism) is however credited to the enlightenment philosophers of sixteenth century Europe. The creation of the United Nations post World War II saw the adoption of the Universal Declaration of Human Rights (1948) by a consortium of nations who together agreed that people deserve a set of rights based solely on their inherent dignity as human beings. While the United Nations has since then had multiple Conventions and joint Declarations, the one that is most relevant for the purposes of this paper is the United Nations Convention on the Rights of Children (UNCRC), 1989. The four primary rights enshrined in the UNCRC (1989) can be seen in Table 1. Comprehensive in itself, the UNCRC is based upon the principles of best-interest (of children) where a child's survival, development and protection have been ensured in a world that respects its voice and views.

The UNCRC was first adopted in 1989 and finally came into force on the 2nd September 1990. It is guided by the non-discrimination principle, i.e. every country that ratifies UN-CRC has to make sure that all the rights in this Convention apply to every single child in that country. The convention consists of 54 articles covering various rights under four major categories of rights for children (below 18) in their 'best interests'.

Table 1: United Nations Convention on the Rights of the Child:A Brief Snapshot

Categories	Rights
The Right to Life	Right to life, the highest attainable standard of health, nutrition and adequate standard of living, the right to a name and nationality
The Right to Development	Right to education, support for early childhood care and development, right to leisure, recreation and cultural activities
The Right to Protection	Freedom from all forms of exploitation, abuse, inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflict
The Right to Participation	Respect for the views of the child, freedom of expression, access to appropriate information and freedom of thought, conscience and religion

Source: Compiled by authors from different UN sources and Child Rights Booklet, "Every Right for Every Child", Centre for Health Education, Training and Nutrition Awareness (CHETNA), against exploitation and against moral and material abandonment.

At a national level, it is important to note that India was one of the first few countries to ratify the United Nations Convention on the Rights of the Child (UNCRC), 1989, in the year 1992. However, the idea of treating children as a special category of individuals is not uncommon and finds its origins in the Constitution of India.

For example, Article 24, 39 and 45 of the Constitution highlight various protection measures for children and imposes certain duties upon the State. Article 21 (A) assures provision of free and compulsory education to all children from the age of 6 to 14 by the state, Article 24 protects children from being employed in hazardous conditions till the age of fourteen and Article 39 (f) assures the right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity while guaranteeing protection of childhood and youth

Similarly; children have the right to be treated like any other citizen in India and enjoy the right to equality (Article 14), right against discrimination (Article 15), right to personal liberty and due process of law (Article 21), right to be protected from being trafficked and forced into bonded labour (Article 23) and right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

Table 2 highlights some notable achievements by the state that reiterates its commitments towards its children. Multiple policy initiatives have been undertaken to establish the required structural mechanism necessary for ensuring the rights of children. However, over the years, most of these measures have become academic exercises, restricted in their scope and adding to the volumes of policy documents and commission reports and academic pieces.

Table 2: Trajectory of Rights of Children in India

1950	Constitution of India covered provision Articles 24, 39 and 45 it mentioned about in hazardous employment, protection against provision of free and compulsory education for children's well-being. For example, in protection of children from being employed moral and material abandonment, and for all children up to 14 years of age.
1974	National Policy for Children was formulated by Government of India, which describes children 'a supremely important asset' of the nation. This is being reviewed, so that it is brought in tune with current priorities and emerging needs of children.
1975	Integrated Child Development Services (ICDS) was launched in accordance to the National Policy for Children. This centrally sponsored scheme aims at providing services to pre-school children in an integrated manner so as to ensure proper growth and development of children in rural, tribal and slum areas.
1992	India ratified UN-CRC, becoming one of the first few countries to do so.
1997	India submitted its first report on the implementation of the CRC. This was reviewed by the UNCRC in January 2000.
2004	National Charter for Children, 2003 was adopted with the intension to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.
2005	National Plan of Action for Children (NPAC) was launched by the Government of India for a collective commitment and action by all sectors and levels of Governments, and a partnership of the Government with families, communities, voluntary sector, civil society and children themselves in consonance with UNCRC, the Millennium Development Goals and others.
2006	A major step was taken to consolidate all child-related issues under one umbrella by upgrading the Department of Women and Child Development (DWCD) into a full-fledged Ministry towards the realization of child rights through improved coordination with other ministries, State governments, institutions and civil society. The ministry implements and monitors all policies and programmes/ schemes pertaining to children.

2007	The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, to ensure that all laws, policies, programmes are in consonance with child rights perspectives enshrined in Constitution of India and UNCRC mandates. The commission has been addressing issues of working children, sexual abuse, female foeticide and others.
2010	Right of the Children to Free and Compulsory Education Act 2009 came into effect

Source: Compiled by the authors from various Government of India sources

Currently, India is home to roughly 20% of the world's children, estimated to be around 36 million. As per current Census, the 13.12% of the population presently fall under the age bracket of 0-6, a decline of 2.8% points. The percentage of people falling within the age bracket of 0-18 is around 39%.

The Right to Education

"We the present generation of India can only hope to serve our country by our failures. The Right to Free and Compulsory Education Act, 2009, enacted in the country since April 2010 is one of the most significant achievement in the history of child rights in India. Enacted with the objective of universalizing elementary education in India by making it the responsibility of the state to provide free and compulsory education to the children from the age of 6 to 14 years, the Act partly actualized Article 45 of the directive principles which stated that, "The state shall endeavor to provide, within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years". While the Constitution envisaged realizing the goal by the end of the first decade post independence, it took more than half a century for the state to realize the importance of elementary education for every Indian child, catalyzed by the Supreme Court judgment in 1993 (Unnikrishnan v. the State of Andhra Pradesh) that correlated the right to education with the right to life.

Even after this landmark achievement, the growing enrolment in private schools best reflects the present situation of state funded public education system in India. Debilitating infrastructure, inadequate number of trained qualified teachers, delay in provision of teaching- learning materials are common characteristics of a majority of public schools-mainly due to the disinterest of the state to revive the public education system. Therefore, it comes as no surprise when people automatically associate the low- quality schooling with public schools and prefer to change the present scenario and asking for better education through government schools.

It is five years since the implementation of the Act (through the Sarva Shiksha Abhiyan) and its performance is far from good. Currently, less than 10% of the schools in India are compliant with the provisions mandated by the RTE Act, indicating the poor performance of the state with respect to implementation. While the Act barely focuses on education outcomes, the fact that the government has failed to even assure the basics in terms of infrastructural norms and trained teachers speaks volumes regarding its intentions with respect to public schools. Around 10% of all the state run schools are single teacher schools, currently facing a massive shortage of about 5 lakh teachers and also 6.6 lakh teachers still contractual and untrained. Pupil Teacher

Ratio norms are miserably failing in schools and the response of the state has been to hire untrained contractual teachers (without any formal training) to fill in the gap. It is hardly surprising that the level of learning of students is poor.

The primary aim of having education as a fundamental right is to empower children through the transformation of their capacity of critical analysis. However, despite having the right to education, we are far from achieving the goals of education.

Child Labour and Exploitation

As a society, we have learnt to live with child labour. In fact, it is probably the only issue where opinions are divided. We lack a comprehensive policy banning all forms of child labour. What we have instead is a policy that only bans the employment of children in hazardous places. The excuse that is commonly cited is how in a severely impoverished nation (like ours), banning child labour is not a pragmatic decision, considering the extent of poverty and dependency on the income of children. Therefore children continue to be employed and remain out of school.

Conclusion

We must accept that by and large, we are failing a majority of our children. While this paper provides attempts to provide an overall perceptiveness on the situation of children in India, the newly emerging categories of children in conflict zones, migrant and street children, children in tribal and mining areas and children suffering from natural disasters have been left out of the discussion here. Given the number of children who are affected by violence on a daily basis, immediate laws must be designed to protect their interests. However, as stated at the outset, laws alone will not suffice. Our structural mechanisms must be strengthened to ensure that children are aware of their rights and have easy access to them, without much dependence on other people. Rigorous punishments must be meted out to those who wrong them and the judicial system has to be vibrant, efficient and functional.

The demographics of the country is quickly transforming, new vulnerabilities are emerging that would require more rigorous policy-decisions and actions. The UNCRC asks for three things with respect to children- provision, protection and participation. At the moment, we are unable to provide basic provisions essential for survival. We have programmes and welfare measures but we are not completely successful in implementing them. As far as protection is concerned, due to the sheer number of children, we are drastically failing. Maybe in the case of protection, is it important to understand the notion of a protective environment or a caring community-that is required for its realisation. It needs responsible citizens, the 60% who have to jointly take

responsibility in protecting the 40%. We need more awareness, social consciousness and efficiency to curb social plagues like sale of children and child labour.

Lastly, the dimension in which our performance is poorest is with respect to nurturing the voice and enabling participation of a child, especially in areas and with respect to decisions which are directly relevant to them. In this entire process, we have somewhere killed the voice of the child who has some aspiration, opinion and suggestion as to how they would like to live their lives. Ironically, child participation is what is primarily missing from most of the debates and discourses on child rights. A child may be vulnerable and dependent on adults for provisions etc., but a child must surely have some opinion about his/ her life. However, in the process of ensuring and debating child rights, we tend to adopt a condescending approach towards children, so often dismissing them saying they don't know anything or emphasizing how we know better. It is this very attitude we have to change. Yes, care and protection is necessary but we must also give children the respect they deserve if we want to truly give them some rights.

References

1. *Child Rights Booklet, "Every Right for Every Child"*, Centre for Health Education, Training and Nutrition Awareness (CHETNA)
2. Chong, Daniel P. L, (2014) *Debating Human Rights* Boulder, Colorado : Lynne Rienner Publishers, Inc., 277 pages
3. Deane, T. (2010). *Cross-Border Trafficking in Nepal and India—Violating Women's Rights*. *Human rights review*, 11(4), 491-513.
4. *Escape from Childhood*, E. (1975). *The Needs and Rights of Children*. Holt, I.
5. General, R. (2011). *Census Commissioner, India. Census of India, 2011*.
6. Government of India. *Census of India (2011) Provisional Population Totals: Part 1 of 2011 India Series 1*
7. Haddad, L (2009) 'Lifting the Curse: Overcoming Persistent Undernutrition in India', *IDS Bulletin* 40.4: 1-8

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8. *Human Rights Watch (2014) They Say We're Dirty: Denying an Education to India's Marginalised*
9. HUNGaMA (2011) *The HUNGaMA (Hunger and Malnutrition) Survey Report 2011*.
10. Imandeep Kaur Grewal & Nandita Shulda Singh (2011) *Understanding Child Rights in India, Early Education and Development*, 22:5, 863-882
11. League of Nations (1924). *Geneva Declarations of the Rights of the Child*.
12. McGirk, T. (1997). *Nepal's lost daughters, India's soiled goods*. *Nepal/India News*, 27.
13. Moira Rayner (2005), "History of Universal Human Rights- Up to WW2
14. Nurullah, S., & Naik, J. P. (1964). *A Students' History of Education in India: 1800-1965*. Macmillan
15. RTE Forum Report (2014) *Status of Implementation of the Right to Free and Compulsory Education: Fourth Year Report*. RTE Forum, New Delhi
16. Saxena, N.C. (2012) "Hunger and Malnutrition in India." *IDS Bulletin* 43.sl: 8-14.
17. Shariff, Abusaleh (2012). "Inclusive Development Paradigm in India: A Post-Sachar Perspective." *US-India Policy Institute (USIPI)*. www.usindiapolicy.org
18. Shashidhar, R., Maiya, P.S., & Ramakrishna, V. (2012). *India's Integrated Child Development Scheme and its Implementation: Performance of Anganwadis and Analysis*. *OIDA International Journal of Sustainable Development*, 5(6), 29-38.
19. UNICEF (2011) *The Situation of Children in India: A Profile* New Delhi
20. *Times of India (2014) 4,000 children trafficked from Bihar every month: DIG. Patna, India*
Available at: <http://timesofindia.indiatimes.com/dty/patna/4000-children-trafficked-from-Bihar-every-month-DIG/articleshow/42051040.cms>
Times of India (2014) increased tourism leads to child exploitation in Madhya Pradesh
Available at: <http://timesofindia.indiatimes.com/india/Increased-tourism-leads-to-child-exploitation-in-Madhya-Pradesh/articleshow/43649758.cms>