
RIGHTS OF CHILDREN: INTERNATIONAL AND INDIAN LEGAL DEVELOPMENTS

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Abstract: A newborn comes in a family and brings in new hopes and possibilities. However, life may not be equally welcoming to every newborn. Law and state need to be conscious of the need to protect the children who are not in a protected environment. The human rights jurisprudence covers the rights of children as a protective regime to the vulnerable group. The United Nations Convention on the Rights of Child was made with a view to ensure protection to the children in need. In India also juvenile law has rapidly developed over years with a lot of debate over the reformatory and deterrent needs of the law. Rights of children is a wider domain than juvenile law. Present paper seeks to analyse the different aspects of rights of children. It covers the care and protection of children under the juvenile law in India. It also includes the protection of children from sexual offences under the POCSO Act and the constitutional legal regime on the rights of children. The paper focusses largely on the educational rights of children. The author compares the role of legislature with the role of judiciary in upholding the right to education.

Present paper is an attempt to doctrinally analyse and compare the laws on the subject.

Keywords: Juvenile, Right To Education, POCSO, Care And Protection of Children.

Introduction: Protection and development of children is an important human rights concern. Not only as a human rights concern but also for futuristic concerns protection and development of children is of high significance. Especially in the present Indian conditions, it has been a complex and dynamic legal domain. From 1986 to 2015, India has had three different statutes on juvenile justice, one after another. Issues of juvenile delinquency have been dwindling between reformatory and deterrent ideas. However, legal regime towards protection of children from sexual offences has had a clearer orientation. Children's right to education has been doubtlessly accepted. This generally means that the rights of children in India has been a complex legal issue with varying socio-economic dimensions. India endorsed the United Nations Convention on Rights of the Child, in 1992 [1]. The Convention aims to ensure that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity [2]. The Convention, recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration, aims at providing full protection and opportunities for all round development of the children [3]. The Convention defines 'child' as a person of less than 18 years of age unless majority is attained at a lesser age by the laws of the country [4]. The child has an inherent right to life [5]. This is a right available invariably to all persons in India. This confirms that a child has a right to life implementation of which is to be ensured more sensitively because the party is vulnerable to any deprivation on the part of any person having control over any aspect of the child's life. Here the context needs a pondering over a basic concern of the human rights jurisprudence as to the definition of a human being. Can a child in mother's womb be considered as a human being? If yes, then such pre-natal existence has to be accepted as a child and all the rights of children must be ensured to the unborn. Further, the Convention also provides for non-crimination on certain grounds including sex [6].

This means any instance of female feticide would be a more grave offence than an indiscriminate abortion. If the state parties are serious about implementing the rights of the child, all round development and welfare of the child has to taken care of. In present day understanding all round development would require a freedom of self-assertion in which the child is not confined and constrained by social, socio-economic factors, in his or her choices.

In India, in the case of Gaurav Jain Vs. Union of India[7], the court held that all children have a right to live in a blot-free environment and the government is duty-bound to provide rehabilitation to children, whenever needed. The Indian Constitutional regime also permits special provisions for children. It provides that the non-discrimination clause within article 15 shall not prevent the state from making any special provisions for women and children [8].

Protection Against Child Labour: Poverty of a country is reflected in the marginalized conditions of the children. It is well established that children are the future of any nation. Strengthening the children is the best investment that a country can make. Specific conditions prevalent in India since centuries have been towards increasing child labour. It was declared illegal by the very provisions of fundamental rights to employ a child less than 14 years, in a hazardous industry. Article 39 of the Constitution directs the state to orient the policy in such a way that the tender age of children is not abused and individuals are not compelled by circumstances to enter into avocations not suited to their age and physical conditions [9]. Also that 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 [10].

India is a significant exception to the global trend toward the removal of children from the labour force and the establishment of compulsory, universal primary school education, as many countries of Africa like Zambia, Ghana, Ivory Coast, Libya, Zambia, Zimbabwe, with income levels lower than India, have done better in these matters [11]. This shows that has caused the problem of child labour to persist here is really not dearth of resources, but lack of real zeal. In M. C. Mehta Vs. Union of India[12], the Supreme Court held that even in non-hazardous industries employment of children can not be allowed so as to infringe their receiving education. Also in Bachpan Bachao Andolan Vs. Union of India and others [13], the Supreme Court ordered the government to ensure that children below 18 years of age are not working in circuses and there educational rights are ensured. Further Supreme Court has also dealt with the clash between a child's right to choice as to consumption and the protection against substance abuse. Supreme court has considered the tender age and vulnerable nature of children's rights and has ordered the government to make an action plan to save the children from substance abuse [14].

Here it is well settled that children are to be protected from their own wrong choices. Vulnerability of the situation is so high that unnecessary check on their choices is itself likely to hinder the over all development of the child. In this regard the most important concern of the child's protection is education.

Educational Rights: Right to education of children in the age range of six to fourteen years is well established. However, the Constitution mentions it only in the directive principles of the state policy [15]. Here, it is expedient to compare the roles of legislature and of the judiciary in upholding the educational rights of the children. Judiciary interpreted article 21 to include the right to education upto 14 years of age [16]. Interestingly this was pronounced in 1992, the year in which India endorsed the United Nations Convention on the Rights of Child. A year later in 1993 another judgment significantly attempted to uphold and strengthen the right to education. It was Unnikrishnan Vs. State of Andhra Pradesh [17]. In this case the Supreme Court held that right to education is a part of right to life under article 21 even beyond 14 years o age and will extend up to professional, technical and higher education. However, realizing the difficulties in implementation of this right, the Court held further that the right to education up to 14 years of age shall be free and compulsory; and beyond that the right will be subject to availability of resources with the state. This judgment opened a new avenue to the right to education. It urged , in it's spirit, the state to make sincere efforts to divert resource towards educational

infrastructure and related facilities. May be another judgment was awaited in the next 10-12 years to increase the compulsory education range to beyond 14 years. However, before this could happen, 86th amendment to the constitution was made and article 21-A was added to the Constitution. Article 21-A provides for free and compulsory education to all children in the age range of 6 to 14 years. The same amendment also added a fundamental duty [18] in part IV-A of the Constitution focusing on the responsibility of parents and guardians of children within 6 to 14 years of age.

Here comparing the role of the legislature and of the judiciary, one may easily infer that the role of judiciary has been far more progressive and the legislative effort has been to shrink the expanding ambit of right to education. Expedient to mention that life and its dimensions are changing fast since the inventions of computer and internet. So are growing the idea and parameters of dignity. If right to education was allowed to remain a part of right to life, it is very much possible that the court could have expanded this right of the children with enforceable effects. The legislative effort in incorporating the right to education in a separate provision appears to be an effort to save the state from such increase in its responsibility. However, the legislature has added some value by enacting the Right to Education Act, 2009. The RTE Act provides for the various measures for implementing the right to education, including:

1. Free and compulsory education till conclusion of 'elementary education'.
2. It defines 'compulsory education' as compulsion of the appropriate government to provide free elementary education and to guarantee compulsory admission and completion of the elementary education to every child in the 6 to 14 years of age group; and the word 'Free' means that no child shall be liable to pay any fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
3. A number of provisions for a non-admitted child to be admitted to appropriate class according to his/her age and understanding.
4. Sense of duty and everyday jobs of appropriate Governments, local authorities and parents in providing free and compulsory education and therefore, distribution of financial and other obligations between the Central and State Governments.
5. Positioning down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
6. Appointment and availability of appropriately trained teachers.
7. Broadening of all the principles enshrined in the Constitution, and ensuring accountability of the enlargement of the child, with building on the child's knowledge, and potentiality and talent and creating the child free of trauma or any kind of fear, and anxiety through a system of child friendly teaching and learning.

Protection of Children from Sexual Offences Act (POCSO), 2012: The Evil of child sexual abuse had been on a steep rise affecting the future of countries' future generations and is an evil to the public at large. Statistics released by the National Crime Bureau revealed that it had been steadily increasing and the same was also observed in a study by the Ministry of the Women and Child Welfare in the year 2007[19]. With a view to curb and punish the instances of child sexual abuse, the Protection of Children from Sexual Offences Act was passed. The Act defines a child as any person below eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the emotional, intellectual, physical and social improvement of the child. The Act defines the diverse forms of sexual abuse along with penetrative and non-penetrative assault, sexual harassment and pornography. It deems a sexual assault to be aggravated under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority with the child, like a family member, teacher, police officer, or doctor. People who traffic children for such purposes are also punishable under the provisions relating to abetment in the Act.

The Act also provides for compulsory reporting of sexual offences. This casts a legal duty upon a person who has information that a child has been sexually abused, to report the offence to proper authority. If he fails to do so, he may be punished with six months' imprisonment or fine or both. Thus, a teacher

who is aware that one of the students has been sexually harmed by a colleague is legally obliged to bring the matter to the attention of the authorities else the teacher is also to be legally penalized.

The police are also required to convey the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may proceed to make further preparations for the safety and security of the child. The Act provides that such a case of child sexual abuse must be disposed of within one year from the date the offence is reported. Provisions are stringent enough to create deterrence on the wrongdoers and courts have also been conscious of this responsibility to create deterrence on such crimes. In *State of Haryana Vs. Janak Singh*[20], it was held that the courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Sexual offences are not only wrongs to the body but also an attack on the psyche of the individual. In cases of child victims it also violates the right of the child to have an all round development because the child's mindset gets captivated into negative thoughts which is difficult to overcome. The United Nations Convention on Rights of Child also provides that No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The child has the right to the protection of the law against such interference or attacks. [21]

Juvenile Justice (Care and Protection of Children) Act, 2015: In India the juvenile law has been quite dynamic. From 1986 to 2015 three statutes were enacted each one substituting the earlier. This has been so because of the fast changing needs of the domain and the sensitive nature of the subject. The earlier laws were more of reformatory character however, the new JJ Act, 2015 adds to the deterrence. The 2015 Act seeks to enact comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection. It takes into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty(1990), the Hague Convention on Protection of Children, Cooperation in respect of Inter-country adoption(1993) and other related international instruments. The Act provides for application in cases involving detention, prosecution or consequence of imprisonment; matters pertaining to apprehension, production before court, disposal orders and restoration, procedures and decisions related to adoption of children, and reintegration and reclamation of children who are in conflict with law or, as the case may be, in need of care and protection under such law. It seeks to enact a law by unifying and amending the law pertaining to the children who are in need of care, nurturing and protection. It seeks to supply to their enlargement needs through proper care, protection and treatment by adopting a child friendly approach in the adjudication and disposal of matters, and for rehabilitation through processes provided and institutions established under the new enactment.

The word 'juvenile' has been replaced with the word 'child' and the expression 'juvenile in conflict with the law' has been transformed to 'child in conflict with law.' While in the JJ Act, 2000, juveniles in conflict with the law are defined as the 'accused', the new law identifies a 'juvenile in conflict with law' to be one who has been established by the Juvenile Justice Board to have principally committed an offence. It also defines an 'abandoned child' as well as 'aftercare'. Chapter II is the most noteworthy feature of the new law, providing for 'Fundamental Principles for Care, Protection, Rehabilitation and Justice for Children'. It incorporates internationally accepted ideologies of presupposition of innocence, dignity and worth, family responsibility, confidentiality and privacy[22], return and restoration, equality and non-discrimination, and diversion and natural justice, among others. Juveniles are institutionalized only if no other family based care option is possible or available. The law prescribes Institutionalization as a measure of last resort.

The recent happenings of serious criminal incidents involving juveniles had created a serious debate and demand for amendments in relevant law for creating deterrence over the juveniles offenders. The major concern of the debate has been to revisit the definition of juvenile because the present day society gets has a much larger exposure to children leading to an early maturity on the subjects of adult involvement. This is apparently evident by the changing lifestyle patterns and also by the increasing

number of juveniles involved in sexual offences. Under the law, in case of a heinous offence committed by a child, the Juvenile Justice Board shall conduct a preliminary enquiry as to his/her understanding of the nature and consequences of the act and the board may conclude that the child may be tried as an adult offender [23].

This new development in the law related to children has invited debate as to its appropriateness but the state of circumstances make it very evident that the time is mature to decrease the age of upper limit and the new law stands genuine. Rather there is scope of further reconsideration of the upper age limit. Therefore, the present development in the juvenile law is a cautious step towards redefining a child. The ideals of reformative treatment to the juveniles cannot be strengthened to such an extent as to dilute the deterrent effect of penal laws. However, there can be some special treatment to the convicted persons of younger age by keeping them in separate cells and not mixing them with hardened criminals so as to keep alive the possibilities of reform. India is a developing country where the standards of living are affected by the standards of exposure which are quite varying. Different economic groups are struggling with different issues from survival to recreation. The juvenile law has to take care of the possibility of reform but at the same time need to deterrence can not be denied too. More so in light of the nature of offences present day juveniles are resorting too. Earlier the majority of offences committed by the juvenile were engendered by poverty and the needs of survival. Now a days an increasing number of juvenile offences are of sexual nature.

In all cases, education is the biggest hope for both prevention and reform; so it is correct to infer that right to education is the most important right which must be implemented with highest sensitivity. It covers not only the needs of all round development but also prevent from a number of possible wrongs to the children. If a child gets an honest application of his right to education, child labour and exploitation are already minimized. Further an educated child is less likely to get into a conflict with the law and is more likely to reform in cases of conflict. Expedient and important is the fact that Indian governments need to be more sensitive about accessibility and quality of education.

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