

Right to Life of a Child in India: An Overview

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Abstract

It would not be an exaggeration of words if it is said that children are the future of a nation. They are the representatives of the older generation in the upcoming world. They are filled with innocence and their innocence should be nurtured so as to make it persistent and to make the society free of corruption. Their level of curiosity is very high and if it is preserved and explored then every child may become a research-oriented scientist, doctor, engineer or likewise. The most prominent international instrument through which the child right has got recognition is the Convention on Rights of Child, 1989. India being a signatory to it is complying with the standards laid down in it.

Keywords: Child right; right to life, identity and education; convention; Pre-natal injuries.

Introduction-

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.”
–Kofi Annan

Children are the backbone of a country. If they are not brought up properly, the nation will have to pay for it. It is quite evident from the world history that as *Adolf Hitler*(1889-1945), in his childhood had grown hatred feelings against the Jews because he could not enter drawing school due to them. Those days the top places were only occupied by the Jews. With his growing age, the hatred feeling has also grown up. Millions of children have no access to education, proper sanitation, immunization, food and health care; instead they have to work for long hours under hazardous conditions and are forced to serve as soldiers in armed conflicts across the globe. And it is very devastating to admit that in many cases, they are abused by the very individuals responsible

for their care.¹ Abusing the rights of the children is a much aggravated form of activity in comparison to that against adult people. Spoiling the childhood will lead towards generating anti-social elements and consequently it will spoil the society at large.

Objective:

The purpose of research on this topic is-

1. To know the correlation between the right to life under Article 21 of the Indian Constitution and provisions under the Convention on Rights of Child.
2. To understand children's right to life in India.
3. To know how the judiciary is tackling these types of cases relating to various child rights.

Various Rights of Children: There is no doubt that children are entitled to all the facets of human rights, but as they are unable to take care of themselves, are representing a very vulnerable and sensitive group they are entitled to some additional rights. According to United Nations Convention on the Rights of the Children (adopted by the United Nations General Assembly on 20th November, 1989 and came into force on 2nd September, 1990) which has been ratified by India in 1992 (Till now 196 member countries have ratified to it except USA) – all children are born with fundamental rights. If right to life of a child is considered then it is having three important facets, namely-

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- Right to existence which definitely includes right to born alive,
- Right to identity which in turn ensures the liability of the state to take care of the child and its rights, and
- Right to education which enables the child to live a life like a social being with due dignity.

Juvenile Delinquency as a By-Product of Violation of Child Rights: If anyone has a look to the factors contributing to juvenile offences- they are poor school attendance, poor educational standard, violence at homes, violence in the social circle, bad peer group and their pressure, socioeconomic causes, lack of moral guidance, lack of basic amenities, adolescent instabilities and impulses, early sexual experiences, mental conflicts, child marriages and media and artificial intelligence etc. among the aforesaid factors except few psychological factors every other factor has a direct connectivity with the serious violation of child right. However it can also be said that most of the psychological factors are the outcome of violation of child rights at a very early childhood.

Important Provisions of Convention on Rights of Child: The history of children's rights dates from the 19th century. In ancient times and up to the middle Ages, though it is very devastating to admit still in some parts of the world parents even had the power of life or death over their children. For the first time in Europe, laws were passed governing child labour.² In 1919, the League of Nations created a committee for the protection of children. Five years later, it adopted the Geneva Declaration, first international treaty on children's rights, then after the Second World War there was rapid growth in the concern regarding child rights. In 1948 the Universal Declaration on Human Rights stipulated that the motherhood and childhood are entitled to special care and assistance. Then finally on 20th November 1989 the Convention on the Rights of the Child (CRC) was unanimously adopted by the United Nations General Assembly. In 2000 the Convention got more strength due to adoption of the two optional Protocols on the sale of children, child prostitution and child pornography, and child involvement in armed conflicts. In 2011 the third optional protocol was adopted introducing a mechanism by which children may submit complaints to the Committee on the Rights of the Child. 2014 is the year of 25th anniversary of the Convention and now it has been ratified by 193 member states of the United

Nations. Only the United States and Somalia, who have both signed the treaty, have not ratified it.

Article 1 of the 1989 Convention provides the definition of a child on the basis of age. According to the provision children below the age of 18 years are entitled to the rights enumerated under the Convention, but autonomy is also given to the member countries to formulate a definite and uniform age. But still India is having no uniform law regarding this. Article 2 provides for non-discriminatory treatment to the children. Protection of the child rights are provided under Article 4. Among other important provisions are parental guidance under Article 5, respect for the views of the child (Article 12), freedom of speech and expression (Article 13) and freedom of thought, conscience and religion (Article 14) and right to education including goals of education under Article 28 and Article 29 etc. As provided under Article 42 the member countries should take the appropriate steps to make the adults and children know about the rights of the children as provided. Articles 43 to 54 deal with the implementation mechanism.

Implementation in India: To start with every child has a right to be born alive and then to the basic amenities of life those are- food, clothes and shelter and of course including right to health care including immunization. The right to born alive abandons all forms of foeticide. A child needs to be taken care of in a proper manner while inside the mother's womb. The judiciary of some countries like California (*Scott vs. Mc Pheeters*, 33 Cal App), Louisiana (*Cooper vs. Blanck*, 39 so, 2d 352), Canada (*Montereal Tramways vs. Leveille* 4 (1933)) and Columbia (*Bonbrest vs. Kotz* 65F Supp 138 (1946)) are allowing actionable claims in case of pre-natal injuries though in *Walker vs. Great Northern Railway, Ireland* [(Q.B. Div) 69 (1891)] the same was denied against the defendant's Railway Company when a child was born deformed because of the railway accident of his mother. But Indian judiciary is far behind regarding these kinds of claims. India has no statute dealing with prenatal injuries unlike United Kingdom. Under the Congenital Disabilities (Civil Liabilities) Act, 1976 of England—

- The action is allowed if the child is born alive, but deformed;
- Damages for the loss of expectation of life of a victim child can be claimed if the child lives at least 48 hours after birth;

- (c) Civil liability towards the child can be however restricted or excluded by a contract made with the parents;
- (d) Contributory negligence of the parents can be pleaded as a defence;
- (e) It is permitted to bring an action for injury to the child even against the mother if the cause of action arises due to the negligent driving of the mother.

Indian Courts when faced with the question of liability of the mother to her child in the womb for injuries caused by negligence have the following options-

- (1) They hold the mother liable for negligence generally in all cases; or
- (2) There is denial to impose any liability for negligence in any case; or
- (3) Holding the mother liable for negligence only in motor accident cases

In the case of *Union Carbide Corporation vs. Union of India* (AIR 1992 SC 248) it was held by the Apex Court that if the congenital defect of a child is traceable to be caused by noxious gas leaked during the Bhopal Gas Leak Disaster then compensation would be allowed. This pronouncement by Apex court can only be served as a directive and is not exactly backed by any statute or it can be utilized authoritatively. However, legal liability can never be imposed upon a mother to take care of the foetus in utero. Judicial or legal definition of "reasonable standard of care" which a mother owes to her foetus would be very difficult to articulate as myriad of financial capacities, educational qualifications, access to health services and ethnic backgrounds of the women can be seen in the Indian society under which imposition of such liability is almost impossible.

However Sec. 140(2) of the Motor Vehicle Act, 1988 (Act No. 59 of 1988) provides for a compensation of Rs 25,000 to an accident victim who sustains permanent disability because of the accident. This liability is covered under the insurance policy against third party risk³ subject to condition that a foetus must be covered under the definition of 3rd party. But actually who can be included within the term 3rd party is not comprehensively provided under the said Act. However the right to file a civil claim of tort is still preserved⁴. Indian Transfer of Property Act, 1882 recognises an unborn person in whose favour property can be transferred⁵.

Regarding nutrition and health Indian Government and various state governments have taken various policy measures. Many schemes like Mid-day meal Scheme, Sarva Sikhya Abhiyana Scheme, Integrated Programme for Street Children, Balika Samriddhi Yojana and so on. Right of the children to development includes right to education as well as right to leisure, recreation and care. However how to ensure the entitlement, extent and enjoyment of these rights is a big question. Article 8 of the CRC 1989 provides for Preservation of identity of a child. It enshrined that children have the right to an identity. Governments should respect children's right to a name, a nationality and family ties. Indian government has passed the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act (No. 18 of 2016) was passed in 2016. The compliance of the Act by Aadhar registration of children is still in question due to various contradictory judgements of the Supreme Court. The only option left is birth registration in concerned municipalities under the Registration of Births and Deaths, Act 1969 (Act No. 18 of 1969). But till now each and every birth is not registered. Particularly the children taking birth in slums, brothels and of parents in begging or any kind of nomadic profession are not having their children's births registered.⁶ As this is purely a duty of parents, uneducated and illiterate parents need to be trained continuously regarding registration process as well as the significance of it.

If the right to education and goal of education provided under A. 28 and A. 29 of the 1989 Convention are considered then India has taken two important statutory steps as follows-

- Insertion of Art 21A and Art 51A(k) to the Constitution in 86th Amendment to the Indian Constitution in 2002; and
- Passing of Right to Free and Compulsory Education, Act 2009 (Act No. 35 of 2009)

Article 21A gives the right to education the status of a fundamental right and art 51A(k) casts a duty upon the parents of the children within 6 to 14 year of age to send them to school. But the beneficiaries of art 21A are minors and they are unable to enforce the same and as it is known to everyone that it is very difficult to ensure the compliance with a fundamental duty. The Right to Education Act provides for the:

- Completion of elementary education (i.e. up to standard VIII) within 6 to 14 year of age;

- Standard student-teacher ratio, infrastructural facility, teachers' working hour including schools' working hours;
- Appointment of appropriately qualified and well trained teachers; and
- Prohibition of punishment or harassment in any form, strict admission procedure by screening, imposing high fees by private schools, employment of teachers for non-academic purposes like elections, relief, census etc, engagement of full-time teachers as private tutors, etc. Many more provisions are there to ensure the nourishment of the potentials of every child.

Right to Education and the Reality: Now three kinds of course curricula are running in India specifically in the elementary level. Those are ICSE (Indian Certificate of Secondary Education), CBSE (Central Board of Secondary Education) and education provided by local or state Board. In the ICSE course pattern the papers are many and the books are very huge in volume and very much information oriented. Automatically the examination needs to be memory-based and it evaluates only the memorisation aspect of a child.⁷ No thought provoking questions are ever asked. The students need to learn everything by heart. So students are so extraordinarily burdened that no room is left for their creativity and decide what is moral and what is immoral and perhaps that's why students are competing like anything in getting a seat in a good college and a good job, but fraction of a second is taken for a government servant to be corrupted.⁸

The ground reality in Indian context is that now a day people belonging to the middle and lower middle class have become more conscious regarding the education of their children, but they have become so ambitious that their children have to pay for it.⁹ The significance of education as understood by their children is that good education is meant to secure good marks, then consequently to get a good job and finally to get good salary.¹⁰ In these cases more often it is seen that the children are unable to accept their failure and develop suicidal tendencies which shows a growing escapist attitude.¹¹

Findings: In order to ensure that every child will enjoy the right to education parents also need to be conscious. The duties of the government are to-

- Attach the birth registration with the census by some

statutory or policy measures so that every birth can be registered and the child population can be assessed properly.

- There should be a uniform law regarding the age of the beneficiaries of child rights.
- To bring amendment in the Right to Education Act, 2009 to lessen the burden of the courses so that the child can enjoy the studies.
- The examination system is so modified by the policy measures that the proper evaluation of the child could be possible by,
 - o Finding the problem or the huddle for the child; and
 - o Finding the real potential of the child which can further be explored.
- Parents should not be imposing their wishes upon their children realising the fact that their children are separate individuals.

Conclusion

The children are not the responsibility of the state only. The society, the parents and every relatives, kiths and kin, the quasi parents or teachers whoever are custodian of a child for howsoever small period it may be should think that they are a part and parcel of the process of child up-bringing. So a child is everyone's responsibility.

Ethical Clearance: Not required, as the article is entirely based on the doctrinal or non-empirical method of study taken.

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