

A CRITICAL REVIEW OF LITERATURE OF CHILD LAW WITH SPECIAL REFERENCE TO RIGHTS OF CHILD

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Article Received on 08/12/2024

Article Revised on 29/12/2024

Article Published on 19/01/2025

INTRODUCTION

India recognizes and acknowledges children as equals to their adult counterparts and deems them worthy of the nation's protection and shelter. Children too are given the basic/fundamental rights of citizenship along with the adults through the Fundamental Rights and Directive Principles of State Policy. These rights encompass the following: Right to equality (Article 14), Right against discrimination (Article 15), Right to personal liberty and due process of law (Article 21), Right to being protected from being trafficked and forced into bonded labour (Article 23), Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

In order to ensure child rights practices and in response to India's commitment to UN declaration to this effect, the government of India set up a National Commission for Protection of Child Rights.

The Commission is a statutory body notified under an Act of the Parliament on December 29, 2006. Besides the chairperson, it will have six members from the fields of child health, education, childcare and development, juvenile justice, children with disabilities, elimination of child labour, child psychology or sociology and laws relating to children.

The Commission has the power to inquire into complaints and take suo motu notice of matters relating to deprivation of child's rights and non-implementation of laws providing for protection and development of children among other things. Aimed at examining and reviewing the safeguards provided by the law to protect child rights, the Commission will recommend, measures for their effective implementation. It will suggest amendments, if needed, and look into complaints or take suo motu notice of cases of violation of the constitutional and legal rights of children.

The Commission is to ensure proper enforcement of child rights and effective implementation of laws and programmes relating to children- enquiring into complaints and take suo motu cognizance of matters relating to deprivation of child rights; non-

implementation of laws providing for protection and development of children and non-compliance of policy decisions, guidelines or instructions aimed at their welfare and announcing relief for children and issuing remedial measures to the state governments.

CONCEPTUAL REVIEW

Every child deserves the shield of security of its nation but there are specific classes that are vulnerable to the exploitation and violence more than the others. These are the victims of gender discrimination, child marriage, child labour, etc. The Indian Constitution has a number of provisions in order to protect a child from possible and further exploitation or discrimination. These include:

- Article 24 Prohibition of employment of children in factories, etc. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 39 Certain principles of policy to be followed by the State. The State shall, in particular, direct its policy towards securing
 - a. that the citizen, men and women equally, have the right to an adequate means of livelihood
 - b. that the ownership and control of the material resources of the community are so distributed as best to subserve the common good
 - c. that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment

- d. that there is equal pay for equal work for both men and women
- e. that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength
- f. 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.
- Article 45 Provision for free and compulsory education for children. 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.

CHILD AS DEFINED UNDER VARIOUS LAWS

In India, the Census of India defines persons below the age of fourteen as children. When making use of standard demographic data, social scientists include females in the age group of fifteen to nineteen years under the category of the girl child. Most of the government programmes on children are targeted for the age group below fourteen years. According to the Constitution, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The legal conception of a child has tended to vary depending upon the purpose. A few illustrations from the law in India are given below:

1. Criminal Law: Indian Penal Code, 1860

Nothing is an offence, which is done by a child under the age of 7 years. The age of criminal responsibility is raised to 12 years if the child is found to have not attained the ability to understand the nature and consequences of his/ her act. Attainment of sixteen years of age for a girl is necessary for giving sexual consent, which is not less than fifteen years in case she is married.

2. Juvenile Law: Juvenile Justice Act, 1960

A juvenile is a child who has not completed the age of 18 years. A delinquent juvenile cannot be sentenced to imprisonment. If a juvenile who has attained the age of 16 years commits an offence of a serious nature and is found not to be in his interest or in the interest of other juveniles to send him to a special home then the juvenile court may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit. Detention in police stations or jails is specifically prohibited under the Act.

3. Family Law: Child Marriage restraint act, 1926

Child means a person who, if a male, has not Completed 21 years of age and, if a female, has not completed 18 years of age.

4. Labour Law: Apprentices Act, 1961

A person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age, and satisfies such standards of education and physical fitness as may be prescribed.

5. Factories Act, 1948

A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor. A child between 14 to 18 years of age cannot be employed for more than four and a half hours.

6. Mines Amendment act, 1952

This Act defines the child as a person who has not completed the age of fifteen years²³. Its provision seems to be more stringent than Factories Act.

- 7. The Child Labour Child means a persons who has not (Prohibition and completed his fourteenth year of age²⁴. Regulation) Act, 1986.

8. Army Head quarters regulation

The age of recruitment in the Army is from 16 to 25 Years. Persons, who are recruited at the age of 16 years, undergo, Basic Military Training for up to two-and-a-half years from the date of enrolment and are then inducted into regular service.

9. Indian Contract Act, 1872

A person below the age of 18 years has no capacity to contract.

10. Provision of Free and compulsory education

Article 21A of the Constitution states that the State shall provide for free and compulsory education for children between six to fourteen years.

The word "child" has been used in various legislations as a term denoting relationship; as a term indicating capacity; and as a term of special protection. These alternative specifications give different concepts about the Child. These include viewing children as a burden which invokes rights to maintenance and support; regarding children as undergoing temporary disabilities making for rights to special treatment and special discrimination; treating children as specially vulnerable for ensuring rights of protection; and recognizing children as resources for the country's development necessitating their nurturing and advancement.

Aims, Objective And Scope of the study

The National and International protection of children finds its justification in the fact that, that regardless of their geographical or cultural origin, children are prey to exploitation. Children's victimization in its different expression is a constant feature of practically all societies. A correct analysis of the children's situation is only possible when we consider it in its real dimensions.

Broadly speaking problem of children can be divided into two groups. First of all there are those that concern exclusively children; secondly there are those problems that are common to entire populations, but against which children require special care in virtue of their mental and physical weakness.

DISCUSSION

SIGNIFICANCE OF THE STUDY

The Significance of this subject is that apart from providing various legislation dealing with the rights of child, an attempt has been made to tackle the problem by bringing forth various legislation relating to the civil political and criminal laws which gives right to a child to protect its right. Under various civil, political and criminal legislation like Constitutional Law, Labour Legislation, Contract Act, Partnership Act, Law of Tort, Income Tax Act, Procedural Law such as Civil Procedure Code, Indian Evidence Act, Family Laws, Juvenile Justice Act, Indian Penal Code, Criminal Procedure code various suggestion have been made to combat with this problem.

Problem of giving adequate protection to a child in under developed and developing countries is quite high and somewhat abnormal, children of various age groups are put to severe hardship like seeking employment in large numbers in industries, hotel and other unorganized sectors where by they are deprived of health care, basic amenities of life. For children living in such pathetic conditions of fundamental rights in an independent country makes no difference to them.

Faced with such dilemma of life's whereby they are pushed into an environment which is not at all conducive for their well-being but due to circumstances which are beyond their control have pushed them to work in hazardous and difficult areas in order to sustain their life and that of their family members. It is of course a rule that children are given the same basic rights as adults. However because of their physical and mental immaturity, children are vulnerable and they require special rights to protect and to meet their unique needs. It is because of this immaturity that children must postpone the exercises of some civil and political rights until they become adults, increasing the obligation to adult to ensure that rights of the child are defended.

It is therefore argued that children should learn about their own rights. Every society hopes and expects that its children will grow up to become capable and responsible citizens who contribute to the well-being of their communities. Yet around the world, children are denied the right that could enable them to survive develop fully and participate actively.

In both developing and developed countries, children cope daily with street violence, pressure to use drugs sexual exploitation and abuses. They work long hours at jobs that are often damaging to their health without the

opportunity for rest and recreation. Millions more who begin school never finishes. Even in countries where enrolment is increasing, children of ethnic and linguistic minorities' girls and children with disabilities, may find that their chance to receive an education is limited or non-existent.

Therefore, our study is more pointed towards various legislation, statutes and International Instruments which are important to give adequate protection to a child right from his formative years like ensuring adequate protection to work as labour or his right to enter into a contractual relationship or to provide necessary safeguards under Partnership Act or rights of child not to be imprisoned etc. Even certain safeguards have been provided under constitutional law as well. And effort is made to show how the aforesaid legislation can make the child, shoulder the responsibilities of his family to earn for them, so as to make the nation more literate, responsible and law conscious.

Various laws have been enacted from time to time, constitutional provisions are amended, various seminar, conference are held to address this issue at national and international forum but gravity of problem remains the same.

Too many children still die of preventable deceases. Malnutrition has yet to be eradicated, access to clean water and sanitary facilities remains luxury in many places, in industrialists and developing countries the problem like pollution and environment degradation have caused various problems and in many parts of the world children of school age face conscription into armed forces, fortune, imprisonment and so on.

The magnitude of the problem and its impact on the nation's future is understood by the law makers but the implementation machinery is not in place due to the prevalent socio-economic problem and hence the statute and legislation remain in letters but failed to make any impact in spirit for the ultimate protection of a child.

VARIABLES

- **ADOLESCENT:** A child who is between the age group of fifteen to eighteen years. It is the age when the young person is developing from child into adult
- **ADULT:** A fully grown up person of eighteen years and above, who is capable of bearing legal right and duties.
- **CHILD:** Child means every human being below the age of eighteen year, unless, under the law applicable to the child, majority is attained earlier. In our country census of India treats persons below the age of our teen as children.
- **CYBER CRIMES**
 - **Harassment through e-mails-** It is very similar to harassing through letters. Harassment includes blackmailing, threatening, bullying, and even

cheating via email. E-harassments are similar to the letter harassment but creates problem quite often when posted from fake ids.

- **Cyber stalking-** The Oxford dictionary defines stalking as "pursuing stealthily". Cyber stalking involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc. Cyber Stalking usually occurs with women, who are stalked by men, or children who are stalked by adult predators or paedophiles to telephone net.
- **Cyber pornography-** This would include pornographic websites; pornographic magazines produced using computers (to publish and print the material) and the Internet (to download and transmit pornographic pictures, photos, writings etc).
- **Morphing:** Morphing is editing the original picture by unauthorised user or fake identity.
- **Email spoofing:** A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates. A review in the CyberlawTimes.com shows that India has crossed the danger mark in cyber crime targeting women and children.
- **CHILD LABOUR:** Children employed as labourers in factories, mines, construction work, or any workshop. Child work per se does not amount to child labour. It is the element of exploitation by the employer leads to child labour in negative form.
- **CHILD MARRIAGE:** Marriage performed in violation of the Child Marriage Restraint (Amendment) Act, 1978. According to this Act the minimum age of marriage for girls is 18 years and for boys it is 21 years.
- **CHILD PORNOGRAPHY:** Child pornography refers to pornography depicting minors. The definition of "child pornography" differs from country to country. Most prohibit visual depictions of sexual activities involving actual children under a specified age. Some countries go further and prohibit all depictions of nudity of minors, whether or not the minor is depicted in an erotic pose or as engaging in a sexual act.
- **CHILD PRODIGY-** A prodigy whose talents are recognized at an early age.
- **CHILD TRAFFICKING:** Child trafficking implies buying and selling of children as if they are chattels. The worst of worst type of child trafficking is the involvement of the child in the flesh trade.
- **DELINQUENT JUVENILE:** A young person, who is not an adult and who is guilty of committing a crime.
- **DOLI INCPAX -** Children below the age of seven is said to be doli- incpax because he is presumed to be void of Mens-Rea. Child under this age group is granted absolute immunity from every criminal liability under IPC or any other law.

- **ETHOLOGY:** An approach concerned with the adaptive, or survival, value of behaviour and its evolutionary history.
- **FETICIDE:** The act of preventing child from being born alive or causing the death of quick unborn child within the womb of mother.
- **FETUS:** The prenatal organism from the beginning of the third month to the end of pregnancy, during which completion of body structures and dramatic growth in size takes place.
- **INCEST:** A Sexual activity between two people who are very closely related in a family e.g., a brother and sister, or a father and daughter.
- **INFANTICIDE:** Infants are the children who are between the age group of zero to one year. Infanticide is the intentional act of causing death to infants. This is mostly used for girl child.
- **INTER COUNTRY ADOPTION:** Where the adoption takes place internationally i.e. Adoptee and adopter.
- **JUS SANGUINIS:-** Granting of nationality on the basis of descent.
- **PRODIGY-** An unusually gifted or intelligent (young) person; someone whose talents excite wonder and admiration.
- **REFUGEE:** In general terms refugee means those people who are abandoned in their state. According to the convention on the status of refugees, 1954 any person who:- As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing such fear is unwilling to return to it.

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