



Protection of human rights of children: A socio-legal study of international conventions, constitutional and statutory provisions

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Abstract

Human Rights being the birth rights are inherent in the human being irrespective of their caste, creed, religion, sex and nationality. Convention on the rights of child imposes an obligation on the State parties to take appropriate measures to protect the child from all forms of physical or mental violence, maltreatment or exploitation. Constitution of India incorporates ample provision to protect the rights of the child. Two recent Indian enactments, namely, Right of children to free compulsory of Education Act, 2009; Juvenile Justice (Care and Protection of Children) Act, 2015 and important judicial decisions of the Apex Court has been highlighted by the author in this article with a concluding remarks that on the proper bringing of children depends the future of the nation.

Keywords: human rights, constitutional and statutory provisions

Introduction

Human Rights are a sub-class of rights. Human Rights are rights that belong to every person and do not depend on the specifics of the individual or relationship between the right-holder and the right grantor. Human Rights exist irrespective of the questions whether they are granted or recognized by the legal and social system within which we live. The colour of the skin may be white or black, the level of the mental make-up may be high or low, way of life of a people may be modern or primitive, the essential reality of all belonging to species of human race cannot be dismissed by any stretch of imagination [1].

Human Rights may be defined, as those minimal rights which every individual must have against the state or public authority by virtue of his being a member of the human family, irrespective of any other consideration. According to Bennett, Human Rights include those areas so individual or group freedom that are immune from governmental interference and subject to governmental guarantee, protections or promotion [2]. Human Rights, being the birth rights, are inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality.

These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. Human Rights are also sometime referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. Human Rights is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. However, it can be said that the rights that all people have by virtue of being human are human rights [3].

As far as Human Rights of child are concerned the General Assembly of the United Nations on November 20, 1989 adopted a convention on the rights of the child. It recognizes the rights of the child for full and harmonious development of

his or her personality. Child should grow up in a family environment, in an atmosphere of happiness, love and understanding. Article 3 of the convention provides that in all actions concerning children whether undertaken by public or private social welfare institutions, the best interests of the child shall be primary consideration Article 19 of the convention mandates the states parties to take appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation. While Article 27 lays down that the state parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. Article 28 incorporates that the education of the child shall be directed to:

- a. The development of the child's personality, talents and mental and physical abilities to their fullest potential, The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.
- b. The preparation of the child for responsible live in a free society in the spirit of understanding peace, tolerance, equality of sexes and friendship among all people, ethnic, national and religious groups. Article 37 obliges state parties to ensure that, No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age. Similarly Article 39 mandates that the state parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect,

exploitation, or abuse; torture or any other form of cruel inhuman or degrading treatment or punishment.

The relevant provisions of Indian constitution relating to child are Articles 15(3), 21-A, 24, 45 and 51-A (K). clause (3) of Article 15 empowers the State to make special provisions for the children. Article 21-A says that the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or hazardous occupation. An amendment made to Article 45 modifies the Article and now it lays down, "The state shall endeavor to provide early childhood care and education for all children until they complete the age of six years." 86th Amendment Act, 2002 inserted a new fundamental duty which says that it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or the ward between the age of six and fourteen years.

To achieve the objects enshrined in the constitution the Parliament enacted the Right of Children to free and compulsory Education Act, 2009. Section 3 of the Act provides that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education. No child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education. It has been further stated that where a child above six years of age has not been admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; provided that where a child is directly admitted in a class appropriate to his or her age, then he or she shall, in order to be at par with others, have a rights to receive special training, in such manner, and within such time limit, as may be prescribed: provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years. In section 5 it has been clarified that here in a school there is no provision for completion of elementary education, a child shall have a right to seek transfer to any other school. For seeking admission in such other school, the Head-teacher or in-charge of the school here such child was last admitted, shall immediately issue the transfer certificate. For carrying out the provisions of this Act, the appropriate Government and the Local authority is obliged to establish a school, where it is not so established, within a period of three years from the commencement of the Act. The collection of capitation fee and screening procedure for admission has been banned by the Act and made punishable. The Act also prohibits private tuitions by the teachers. It has been categorically stated that the curriculum and the evaluation procedure for elementary education shall be laid by an Academic Authority. The Academic Authority, while laying down the curriculum and the evaluation procedure shall take into consideration various factors such as development of child's physical and mental abilities to the fullest extent' all found development of the child.

In the year 2015, the Parliament enacted 'The Juvenile Justice (Care and protection of children) Act, 2015 to amend the la

relating to children found to be in conflict with law and children in need of care and protection, development, treatment, social re-integration by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through institutions and bodies established.

Judicial protection of the human rights of children

In *Bandhua Mukti Morcha V. Union of India* ^[4], a writ petition under Article 32 of the constitution was filed by way of public interest litigation to issue a writ of mandamus directing the Government to take steps to stop employment of children in carpet industry in the state of U.P. The Supreme Court followed the relevant international conventions and pointed out, "Article 26(1) of the Universal Declaration of Human Rights assures that everyone has the right to education which shall be free, at least at the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made available and higher education shall equally be accessible to all on the basis of merit. Education enable development of human personality and strengthens the respect for human rights and fundamental freedoms. It promotes understanding, tolerance and friendship among people. It is, therefore, the duty of the state to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens".

In *M.C. Mehta V. State of T, N.* ^[5], the Apex Court highlighted the magnitude of the problem, examined the constitutional, statutory provisions and quoting India's commitment pointed out, "... India has accepted the convention on the rights of the child which was concluded by the UN General Assembly on 20th November, 1989. This convention affirms that children's rights require special protection and aims to ensure the continuous improvement in the situation of children all of the world. The convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights. The Government of India deposited its instrument of accession to the above convention on December 11, 1992 with the United Nation's Secretary General. That instrument declares that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India ... the Government of India under takes measures to progressively implement the provision of convention, in accordance with its national legislation and relevant international instruments which is a state parties.

In *Parents forum for meaningful Education and another V. Union of India* ^[6], the petitioners challenged the provision of corporal punishment, which could be imposed on a student, embodied in Rule 37 of the Delhi school Education Rules, 1973.

The petitioners contended that infliction of corporal punishment upon children is inhuman. He Rules 37(1) (a) and 37(4) are illegal, arbitrary and violative of Articles 14, 19, 21 and 39(4) and (f) of the Constitution of India. A Division bench examined the above rules and contentions of the parties in the light of provisions of the convention on the rights of the Constitution and National Policy of Education.

It was observed, "The Preamble to the convention on the

Rights of the child recalls that in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance. Articles 19, 29, 37, 39 and 40 reflect the idea that the children should be protected from all forms of physical or mental violence, injury, neglect, exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment and adoption of means for the welfare of the child in every conceivable way and preservation of the dignity of the child.”

The Government of India acceded to the Convention on in 1992 before acceding to it. It is significant to note that the National Policy is in tune with the Convention inasmuch as it is against imposition of corporal punishment.

In *R.D. Upadhyay V. State A.P.* ^[7], the main issue involved in the case was relation to the direction to be issued in matter of children who were in jail either as under trial prisoner or convicts. It was pointed out “This court has, in several cases, accepted International conventions as enforceable when these conventions elucidate and effectuate the fundamental rights under the constitution. They have also been read as part of domestic law, as long as there is no inconsistency between the convention and domestic law.

In *Avinash Mehrotra V. Union of India* ^[8], the Supreme Court Interpreted that right to education include the right to the provision of a safe environment in schools, and imposed an obligation on schools to comply with certain fire safety precautions. The state must ensure that children suffer no harm in exercising their fundamental Rights to education and accordingly, must ensure that schools provide safe facilities as part of a compulsory education.

Conclusion

Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years this position has been well realized. It is submitted that in 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International covenant on civil and political Rights, 1966. The importance of the Child has been appropriately recognized. India as a party to these International charters having ratified the declaration; it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The children’s Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased.

References

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