



Role of Judiciary in Protection of Child Rights in India

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1. Introduction

Children are the priceless assets of mankind. They must be spruced from a young age. They take over from elders, the responsibilities of developing, maintaining, and transmitting civilization and facts and features of civilization, culture, humanity, personality, social, ethical, and aesthetic values, and norms of a society.

They are the future. Thus, the welfare and protection of children are of utmost need not only for the children but also for a better and well-developed society.

The role of the judiciary to provide justice to juveniles is crucial. Juvenile justice is a legal framework that defines justice for juveniles under the legal system of India. The system gives special treatment and protection to juvenile delinquency. At present juvenile crimes is increasing and thus is giving rise to the question of whether juveniles or children should be tried as adults. The issue needs to be focused upon.

The government, in this regard, has laid various legislations and rules along with several conventions at the global level. The universal concern for the well-being and security of children began in 1924 with the declaration on The Rights of the Child, the first convention of the League of Nations, adopted by Geneva.

Several children are subjected to victims of sexual abuse, abduction, ruthless beating, drug addiction, mental and physical abuse, trafficking, exposure to several viruses and diseases and have a life with no future scope. Pamela Shifman, Associate Director of Equality Now a U.S Based International Human Rights Organization, said at a Discussion on Initiatives against Trafficking in Women and Children' organized at American Centre, Mumbai that: The 21st century brings with it some of the dark realities of the last century concerning the commercial sexual exploitation of children. Children worldwide are deprived of their human rights, dignity and childhood through child prostitution, child pornography and other forms of exploitation.

Considering the above-named facts, the General Assembly on 20th November 1989 adopted the United Nations Convention on the Rights of the Child (UNCRC) which came into force on 2nd **September 1990. On 11th December 1992, India added the Convention. The UNCRC outlines the essential ingredients of human rights that ought to be followed.** Broad classifications are made that covers all civil, economic, social, and cultural rights of each child, namely:

1.1 Right to Survival

Right to born; Right to minimum standards of food, shelter, and clothing; Right to live with dignity; Right to health care, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy.

1.2 Right to Protection

Right to be protected from all kinds of violence; Right to be protected from neglect; Right to be protected from physical and sexual assault; Right to be protected from dangerous drugs; Right to participate.

1.3 Right to Freedom of Opinion

Right to freedom of expression; Right to freedom of association; Right to information; Right to participate in any decision making that involves him/her directly or indirectly; Right to Development.

1.4 Right to Education

Right to learn, right to relax and play; Right to all or any sorts of development: emotional, mental, and physical.

Adding to the Convention, an International Criminal Court has been established on 17th July 1998 to safeguard the interests of women and children. One of the enshrined principles of UNCRC provides the right to identity and family to a child.

The intensive mobilization of acts due to the impact of the Convention has improved the lives of youngsters around the world. The addition of the Right to Education Act (RTE) accelerated the method of improvement of the lives of youngsters leading to the expansion of educational opportunities around the world. India enacted RTE in August 2009. It states that education is a fundamental right of every child who is between 6 and 14 years of age. No child ought to be held back, expelled, or is needed to pass a board examination till the completion of education.

Also, a provision has been created to bring up dropout's equivalent to their contemporary students. Children across the globe fail to complete their education because they do not have the means to buy schooling. They face discrimination, violence or are bullied or earning becomes the priority than education to sustain their lives.

The Constitution of India binds with Articles that are directly related to child rights, they are;

Article 15 (3):

Requires the state to form special provisions for youngsters

Article 21-A:

provides free and compulsory education to all or any children of the age 6:14 years as determined by state law.

Article 23 prohibits the trafficking of citizenry including children.

Article 24 mandates that no child below 14 years can add any hazardous occupation or industry.

Directive Principles of State Policy that are related to child rights are;

Article 39(a) & (f) direct that the state policies are directed towards securing the tender age of youngsters.

Article 45 states that the state shall endeavour to supply infancy care and education for all children until they complete the age of six years.

Article 51-A says that it shall be the elemental duty of the parent and guardian to supply opportunities for education to his child or because the case could also be, ward between the age of six and fourteen.

2. The Indian Penal Code (IPC), 1860

section 82, states that no child below the age of seven would be held criminally responsible for an act as he is not capable of understanding the frequency or the consequences of an action. Section 83

provides for children of age up to 12 years with mental disability relief from criminal responsibilities. Concerning protection against kidnapping, abduction, and related offences the given age is 16 for boys and 18 for girls. To give sexual consent, a girl must be of 16 years, unless she is married, in which case the prescribed age is no less than 15.

The Prohibition of Child Marriage Act, 2006, came in effect from 1 November 2007, states the age of marriage 21 for boys and 18 for girls.

3. The Juvenile Justice (Care and Protection) Act, 2000

The Juvenile Justice (Care and Protection) Act, 2000 is enacted as human rights legislation in all states uniformly. The act repeals the entire children's act enacted by states individually. The act deals with Juvenile in conflict with law, defined under section 2(1) and juvenile in need of care and protection, defined under section 2(d). Section 2(k) of the Act defines child as any person who has not attained the age of 18 years of age. Juvenile justice aims to segregate them from adults, according to their treatment as per their age and legal status, and reform and rehabilitate prisoners.

4. In the case Sheela Barse v. Union of India

Sheela Barse a social worker took a case of helpless children below the age of 16 years detained illegally in jails. The issue of the case was whether by disallowing interview of prisoners, the fundamental rights of the petitioners (Sheela Barse and others) as stated under Article 19(1)(a) and Article 21 of the Indian Constitution were infringed by the authorities and whether an uncontrolled interview of prisoners was permissible as contended by the petitioner. The apex court of India held that public access should be granted to the prisoners as per the fundamental rights stated in Article 21 of the Indian Constitution.

The interviews become necessary for correct information regarding prison and its conditions. The interviews would be cross-checked with competent authorities to prevent the dissemination of wrong information. Finally, the court held that the petitioner is liberal to make an application for interview of prisoners to prescribed authority and once such an application is made, it shall be restrained consequently by the jail authorities and subject to public order, decency, and morality.

In the case *Sheela Barse v. Secretary Children's Aid Society*, the appellant filed a writ petition in the Bombay High Court. The appellant stated that children at the aforesaid observation home were forced to work without remuneration and were indulged in hazardous employment. The issues raised were whether or not Children's Aid Society fell within the ambit of the expression the state according to Article 12 of the Indian Constitution and whether the employment of children in the Observation Homes is unlawful.

The Supreme Court held that the Children's Aid Society fell within the expression of the State as stated in Article 12 of the Indian Constitution and employment of children in the Observation homes without remuneration is not illegal per se. The act ensures protection of the child's rights throughout the process of arresting the child, inquiry, aftercare and rehabilitation. It avails legal aid and a qualified interpreter or translator throughout proceedings.

The act's objective is to amend laws and consolidate children in conflict with the law, and children in need of protection and care by providing proper assistance, legal aid, protection and treatment by catering for their developmental needs.

5. The Child Labour (Prohibition and Regulation) Act, 1986

It defines a child to be a person of age less than 14 years. The same age limit to work is stated in the Motor Transport Workers Act, 1962 and the Beedi and Cigar Workers (Conditions of Employment)

Act, 1996. Whereas the FACTORIES ACT, 1948 and PLANTATION LABOUR ACT, 1951 defines a child to be less than 15 years of age and an adolescent who has completed the age of 15 but not 18.

Factories Act allows adolescents to work in factories, but not more than half a day provided they are medically fit. The aim is to eradicate abuse of children in any form of employment and prevent them from engaging in hazardous employment.

6. In the case MC Mehta v State of Tamil Nadu

The main issue was to provide effective alternative means to curb the employment of children in hazardous jobs along with issues related to education, growth, and development of children. The supreme court stated that children should not be employed in hazardous jobs and the manufacturing of fireworks or matchboxes as there is a risk to their life. Steps are required to be taken to monitor and boost the quality of life of children.

7. The Protection of Children from Sexual Offences Act (POCSO), 2012

protects children (male and female) from any kind of sexual abuse, offences, exploitations, and harassment. Special courts, under the act, are established, that deal with such cases without revealing the identity of the child. The act subsumes friendly procedures to approach children such as recording statements of the child at his/her residence, or any place preferred by the child.

A women police officer is preferred for recording statements. The officer should be civil and not in uniform. No child is to be detained at a police station at night. Medical examination of the child would be conducted only in the presence of a parent or person in whom the child has trust. Frequent breaks for the child while trial and should not be called repeatedly for testification. No aggressive questions or character assassination.

8. Conclusion

A sapling must have good soil to grow strong. Infertile soil will not bring forth splendid fruit. The judiciary has always made concrete efforts to improve and safeguard the conditions of children. It has directed the states that they must create such an environment where the child workers can have opportunities to grow and develop in a healthy and friendly environment with full consensus of the mandate of the Indian Constitution.

The above-mentioned facts show the activism of the judiciary and various types of exploitation of children. Despite all legal frameworks, evil against children such as child marriage, child prostitution, child labour prevails because of poverty, illiteracy, lack of infrastructure and reformative theory. Fear of consequences against such practice needs to be instilled in minds of people. A national fund should be created to ensure juvenile justice. Every case where children are should have legal counsel and certain provisions of the law must be amended to eliminate the penal nature to make it fair legislation.

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