



## CHILD RIGHTS & HUMAN RIGHTS: REVIEW

**Dr. Hitaishi Singh<sup>1</sup>, Dr. Jaya Bharti<sup>2</sup>**

*Associate Professor, Home Science Department, Andnnmm (Csjmu) Kanpur*

*Assistant Professor, Psychology Department, Andnnmm (Csjmu) Kanpur*

### ABSTRACT

*Child Rights are fundamental freedoms and the inherent rights of all human beings below the age of 18. These rights apply to every child, irrespective of the child's parent's / legal guardian's race, color, sex, creed or other status. Children and young people have the same general human rights as adults and also specific rights that recognize their special needs. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The Convention on the Rights of the Child sets out the rights that must be realized for children to develop to their full potential. The Convention offers a vision of the child as an individual and as a member of a family and community, with rights and responsibilities appropriate to his or her age and stage of development. By recognizing children's rights in this way, the Convention firmly sets the focus on the whole child.*

**KEYWORDS:** *Child Rights, Human Rights, Laws*

In India this consciousness is reflected in various provisions of the Constitution. Article 24 prohibits the employment of children in any factory or mine or in any other hazardous occupation. Article 39 (e) and (f) lays down that the 'State shall direct its policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment'. Education of children has been recognized as a sine qua non for the growth of children. Accordingly, Article 21A provides that the 'State shall provide free and compulsory education for children who are between 6 to 14 years of age'. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in

pursuance of these constitutional provisions evolved a National Policy for the welfare of children. The policy starts with a goal oriented perambulatory introduction. "The nation's children are supremely important asset. Their nurture and solicitude are our responsibility. Children's Programme should find a prominent part in our national plans for the development of human resources. So that our children go up to become robust citizens, physically fit, mentally alert and normally healthy, endowed with the skills and motivations needed by the society. Equal opportunities for development of ail children during the period of growth should be our aim, for this would, serve our large purpose of reducing inequality and ensuring social justice."

A wide range of laws guarantees to a substantial extent the rights and entitlements provided for in the Constitution of India and in the Convention on the Rights of the Child; they are:

The Apprentices Act, 1861; The Child Marriage Restraint Act, 1929; The Child Labour (Prohibition and Regulation) Act, 1986; The Children (Pledging of Labour) Act, 1929; The Guardian and Wards Act, 1890; The Hindu Minority and Guardianship Act, 1956; The Hindu Adoption and Maintenance Act, 1956; The Immoral Traffic (Prevention) Act, 1956; The Juvenile Justice Act, 1986; The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960; The Probation of Offenders Act, 1958; The Reformatory Schools Act, 1897; The Women's and Children's Institutions (Licensing) Act, 1956; The Young Persons (Harmful Publications) Act, 1956; The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992; The Prenatal Diagnostic Technique (Regulation, Prevention and Misuse) Act, 1994; The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Apart from these laws, mainly concerning children, a host of related welfare and criminal laws have beneficial provisions for the care and protection

of children. Even the laws relating to commerce, industry and trade have protective provisions for children. The children are to be protected and cared,



as they are delicate and precious flower of life. It is undisputed that they are the potential embodiment of our ideals, aspirations, ambitions, dreams and hopes. The child for the fall and the harmonious development of its personality should grow up in a very congenial family environment, in an atmosphere of happiness, love and understanding. Child in fact by virtue, of his physical and mental immaturity needs special safeguards and care including appropriate legal protection, before and after birth.

The childhood is the period when minds and bodies and personalities are being formed and when even temporary deprivation is capable of inflicting lifelong damage and distortion on human development. These vital and vulnerable years of childhood should as far as is humanly possible, be protected from the worst mistake and malignancies of the adult world. A child has only one chance to develop normally and the protection of that one chance should be given a first call on societies concerns and capabilities. There will always be something more immediate, there will never be anything more important.

The dawn of the 19th Century saw the emergence of a new awareness as to the separate legal status of a child. The 20th century further witnessed the most significant winds of change in the area of human rights of children. Thus, 'Juvenile Jurisprudence' as a branch of law, emerged and various international conventions and laws of states emerged to afford protection to children. Particularly, the UN Convention on Rights of Child, 1989 focuses on different sets of rights of children.

The two great international instruments, namely, the Declaration and the Convention, are central to the jurisprudence of the child. But beyond these two instruments the child deserves progress which should be measured by the world's current disposition towards the child and so it is that for a fortunate tomorrow every country has to show grave and yet practical concern for the child, from the unborn babe in the womb to the adolescent person struggling to build a niche where young personhood has work in the world. *"Humanity shows itself in all its intellectual splendour during this tender age as the sun shows itself at the dawn, and the flower in the first unfolding of the petals; and we must respect religiously, reverently, these first indications of individuality. If any educational act is to be efficacious, it will be only that which tends to help towards the complete unfolding of this life."*

## RELATIONSHIP OF CHILD RIGHT AND HUMAN RIGHT

Children's rights are the perceived human rights of children with particular attention to the rights of special protection and care afforded to the young, including their right to association with both

biological parents, human identity as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child.<sup>10</sup> Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate.

- Children's rights recognize fundamental guarantees to all human beings: the right to life, the non-discrimination principle, the right to dignity through the protection of physical and mental integrity (protection against slavery, torture and bad treatments, etc.)
- Children's rights are civil and political rights, such as the right to identity, the right to a nationality, etc.
- Children's rights are economic, social and cultural rights, such as the right to education, the right to a decent standard of living, the right to health, etc.
- Children's rights include individual rights: the right to live with his or her parents, the right to education, the right to benefit from protection, etc.
- Children's rights include collective rights: rights of refugee and disabled children, of minority children or from autochthonous groups.

## NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

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.



## 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'<sup>12</sup>. 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:

Criminal Law: Indian Penal Code, 1860	Nothing is an offence, which is done by a child under the age of 7 years <sup>13</sup> . 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 <sup>14</sup> . 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.
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
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.
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.
Factories Act, 1948	A child below 14 years of age is not allowed to work in any factor. 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.
Child Labour (Prohibition and Regulation) Act, 1986	The Child means a persons who has not completed his fourteenth year of age <sup>24</sup> .
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 especially vulnerable for ensuring rights of protection; and recognizing children as resources for the country's development necessitating their nurturing and advancement.

## STATISTICS ON UNDERPRIVILEGED CHILDREN IN INDIA

There are 444 million children in India under the age of 18 years. This constitutes 37% of the total population in the country (Census 2011).

### A. Education:

- 1 in 4 children of school-going age is out of school in our country – 99 million children in total have dropped out of school (Census 2011)
- Out of every 100 children, only 32 children finish their school education age-appropriately



(District Information System for Education (DISE) 2014-15)

- Only 2% of the schools offer complete school education from Class 1 to Class 12 (District Information System for Education (DISE) 2014-15)

**B. Child Labour And Exploitation:**

- There are 10.13 million child labourers between 5-14 years in India (Census 2011)
- India has 33 million working children between the ages of 5-18 years. In parts of the country, more than half the child population is engaged in labour (Census 2011)
- Every 8 minutes, a child goes missing in India – kidnapping and abduction is the largest crime against children in our country (District Crime Record Bureau (DCRB) 2014)
- Over the last 10 years, crimes against children has increased 5 times over (District Crime Record Bureau (DCRB) Data Series)
- Fear of failure in examinations in the second highest cause of suicides in children (Accidents and Suicide Deaths in India (ASDI) 2014)

**C. Health:**

- The health indicators of children in India are among the worst in the world – only around half (54%) of the infants in India are fully immunised. More than half the births in the country continue to remain home-births (National Family Health Survey (NFHS) 3)
- 4 out of 5 children under 3 years of age in the country are anemic (National Family Health Survey (NFHS) 3)
- 3 out of 5 children are malnourished (National Family Health Survey (NFHS) 3)
- Around 8.5 lakh children are estimated to die before their first birthday each year (Census 2011 and Sample Registration System (SRS) 2013)
- Latest NFHS data shows that less than one-third infants receive adequate diet in all states in the country\* (National Family Health Survey (NFHS) 4)
- \*Data has been released for 18 states and Union Territories

**D. Girl Child:**

- 42% of married women in India were married as children (District Information System for Education (DISE) 3)
- 1 in every 3 child brides in the world is a girl in India (UNICEF)
- India has more than 4.5 lakh girls under 15 years of age who are married with children. Out of

these, 70% of the girls have 2 children (Census 2011)

**INDIAN CONSTITUTION AND CHILDREN RIGHTS (PRESENT LEGAL FRAMEWORK)**

The Constitution of India is the basic law of the country that includes the fundamental rights and directive principles for every citizen. The fundamental rights in the Constitution of India impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Fundamental rights if violated can be brought before the courts. Directive Principles lay down the guidelines the Government have to follow. If they are violated they cannot be taken before the courts but because of judicial interpretation, many of the directive principles have now become enforceable through legal actions brought before courts.

A. The Fundamental Rights in the Constitution that directly relate to children are

1. Article 15(3) requires the state to make special provisions for children.
2. Article 21-A provides free and compulsory education to all children of the age 6 – 14 years. In such a manner as the state may by law determine. This Article 21A of the Constitution of India envisages that children of age group 6 to 14 years have a fundamental right to education.
3. Article 23 prohibits trafficking of human beings including children.
4. Article 24 mandates that no child below 14 years can work in any hazardous occupation or industry.

**CONCLUSION**

Etymologically, the term “child” comes from the Latin *infans* which means “the one who does not speak”. For the Roman, this term designates the child from its birth, up to the age of 7 years. This notion evolved a lot through centuries and cultures to finally designate human being from birth until adulthood. But this conception of the child was wide and the age of the majority varied from a culture to another. The Convention on the Rights of the Child of 1989 defines more precisely the term “child”: “[...] a child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”. The idea, through this definition and all the texts concerning child welfare, is that the child is a human being with rights and dignity. Children’s rights were recognised after the 1st World war, with the adoption of the Declaration of Geneva, in 1924. The process of recognition of children’s rights continued thanks to the UN, with the adoption of the Declaration of the Rights of the Child in 1959. The recognition of the



child's interest and their rights became a reality on 20 November 1989 with the adoption of the International Convention on the Rights of the Child which is the first international legally binding text recognizing all the fundamental rights of the child.

Children are innocent, trusting and full of hope. Their childhood should be joyful and loving. Their lives should mature gradually, as they gain new experiences. But for many children, the reality of childhood is altogether different. Right through history, children have been abused and exploited. They suffer from hunger and homelessness, work in harmful conditions, high infant mortality, deficient health care and limited opportunities for basic education. A child need not live such a life. Childhood can and must be preserved. Children have the right to survive, develop, be protected and participate in decisions that impact their lives.

Importance of human rights to knowing about your rights is the first step in promoting greater respect for human rights. Because human rights values are universally recognized: Adults who work with children are constantly faced with the task of trying to determine which behaviours are acceptable and which are not acceptable. Making these types of decisions often involves relying on personal experiences or values. Human rights education provides a clear framework for evaluating when and how to intervene by referring to the universally recognized values that stem directly from the Universal Declaration of Human Rights. To encourage the development of self-esteem and active participation: Once children become aware of their rights, they begin to recognize their own importance as human beings. They also start to realize that what they live, think and feel has value and that they can make a positive contribution to the life of the group, of their family, their school, and their community. Learning about rights encourages children to become more actively involved. To reinforce positive behaviours: Human rights education is one of the most effective ways of encouraging positive behaviour because it involves both critical reflection and a strengthening of the child's sense of responsibility. Human rights education encourages children to reflect on how they interact with others and on how they can change their behaviour to better reflect human rights values.

## REFERENCES

1. Anil Joshi. *Rights of the Disabled Children; National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
2. Archbishop Desmond Tutu at the meeting of the Eminent Person's Group on the impact of Armed Conflict on Children, New York.
3. Chockalingam, K. "A Review of Victimological Developments in India", *Japanese Journal of Victimology*, Vol. 3, No. 20, 1995, pp. 78-95
4. D. Srinivas Kumar, Dr. L.K.Deb, *Legitimacy, Status & Rights of a Child - Socio Legal Perspective*, S.C.J., 2000 Vol. 2 Part I P.1.
5. Dr. Asha Bajpai, *The Child's Right to Protection; National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
6. Dr. C. Jayaram, *Children Laws More Akin To Morality Than Legality*, S.C.J., 2000 Vol. 3 P.59.
7. Dr. GIS Sandhu & Dr. Devinder Singh, *Free and Compulsory Education For Children, National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
8. Dr. M. B. Jameet, *Menace of Child Labour, National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
9. Dr. M. Sammaiah "Children as Victims of Crime-The Denial of Justice" Cr. L.J. 2001 p.50
10. Dr. Mrs. Snehal Fadnavis, *protection of Children Affected by Armed Conflicts; National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
11. Dr. P.C. Pati, *Inter-Country Adoption of Children; Judicial Consideration in India, Central India Law Vol. XVI P.1.*
12. Dr. R.P. Rai, *Child Labor- A Myth or Reality, Central India Law Quarterly Vol. XVI P.120 (2003).*
13. Dr. Syed Maswood, *Is Child Labor A Necessary Evil in India ? Conflict or Synthesis.*, S.C.J
14. Durga Panda Das, "Some highlights on prevention of trafficking in children and protection of child rights in India" Vol9, Part 6 June 2003
15. *Femina, Battered Dreams - Villent Reality - Cover Story, Aug. 1994*
16. *Femina, Crossing Bloodlines-Incest: The Unspoken Trauma Cover Story, June 1992 18.* Feroze, "Cybercrime" - a growing threat by Md. Kamruzzaman
17. GIF, 2003, *Voices from the Streets. Mumbai: Childline India Foundation.*
18. *International concern for protection of child "SCJ May/ June 1992 VOL.2*
19. J. F. Me Donough, and R. C. Saari (Eds.), *The Trapped Women: Catch 22 in Deviance and Control*, N. Y., sage, 1987.
20. Jain. S.N, "Law and Child in India", DPA, Vol. XXV. No.3, 1979.
21. John Locke *Some Thoughts on Education (1693)*
22. John Menacheri, *Effective Intervention Strategies Against Child Abuse in India: A call for Multi-Disciplinary Partnerships;*
23. Justice V. R. Krishna Iyer, *The Child and the Law; National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur.*
24. Kaumudhi Challa, *Immoral Trafficking And Child Prostitution, National Seminar on Child's Right, Department of Law, Dr. Ambedkar College, Nagpur*