



# A LEGAL REGIME ON HUMAN RIGHTS OF CHILD IN INDIA

Indumathi M.J

Assistant Professor of Law, Vidyavardhaka Law College, Mysuru  
vagvilasini1@gmail.com

## INTRODUCTION

Child rights are the 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 law appropriate for the age and development of the child. Child rights are fundamental freedoms and the inherent rights of human beings below the age of 18. These rights apply to every child, irrespective of the child's, parent or legal guardian's, race, colour, sex, creed and other status.

International human rights instruments recognize that children as well as adults have basic human rights. The principles outlined in the international human rights framework apply both children and adults. Children are mentioned explicitly in many of the human rights instruments.

The Convention on the rights of the child regulates the rights more completely and provides a set of guiding principles that fundamentally shapes the way in which we view children.

## CONCEPT OF HUMAN RIGHTS AND CHILD RIGHTS

Human rights are the moral principles and norms. That describe certain standards of human behavior and regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she/he is a human being and which are inherent in all human beings regardless of their nation, location, language, religion, ethnic origin, or any other status. They are applicable everywhere and at every time in the sense of being universal.

The doctrine of human rights has been highly influential within international law, global and regional institutions. Action by states and non-governmental organisations form a basis of public policy worldwide.

The UN set a common standard on human rights with the adoption of the universal declaration of human rights in 1948.

Although this declaration is not part of binding international law, its acceptance by all countries around the world gives great moral weight to the fundamental principles that all human beings rich and poor, male and female of all races and religions are to be treated equally and with respect for their natural worth as human beings.

Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors. Children are young, dependent and need care for their well being and development. The family and society has to provide for food, shelter, clothing, health needs and education. Children should be safeguarded against abuse, so need protection. All children have a claim for those things in a society that would help in their care and provide protection. Most children are not aware of their rights. Hence it is the responsibility of adults to make them aware of the rights.

## MEANING OF A "CHILD"

According to International law, "A child means – every human beings below the age of 18 years. This is a universally accepted definition of a child and comes from the United Nations Conventions on the rights of the child [UNCRC] an international legal instruments accepted and ratified by most countries.

While all children need protection, because of their social, economic or even geographical location. Some children are more vulnerable than others and need special attention.



These children are –Homeless children, Migrant children Street and runaway children ,Child beggars, children of prostitutes ,Trafficked children, Children affected by natural disasters, Children affected by HIV/AIDS, Disabled children.

#### IMPORTANCE OF CHILD RIGHTS

Children are citizens of a nation from their birth. They also have rights. Rights through history children have been abused and exploited. They suffer from hunger and homelessness, work in harmful conditions, high infant mortality and deficient healthcare and limited opportunities for basic education, children have the right to survive, develop, be protected and participated in decisions that impact their lives.

Children are human beings and require safety and opportunities for development. Their personality formation takes faster during early childhood. Children are young in age , small in size and low in energy as compared to adults. Therefore they need much more care and help.

The convention on the rights of the child brings together the children's human rights articulated in other international instruments. This convention articulates the rights more completely and provides set of guiding principles that fundamentally shapes the way in which we view children.

All children have the same rights. All rights are interconnected and of equal importance. The convention stresses these principles and refers to the rights of others, especially their parents.

#### ROLE OF UNITED NATIONS IN ENFORCING THE CHILD RIGHTS

##### UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD [UNCRC]

The first declaration of the child was a 5 point declaration, drafted by Eglantine Jebb [Founder, Save the children] in 1923.

In 1978 a new and binding convention on the rights of the child was called for. By the end of the cold war –the First international legal instrument the UN Convention on the rights of the child adopted by consensus entered into force as international law on Sep – 2, 1990.

The four core principles of the convention are Non –Discrimination, Devotion to the interests of the child , The right to life, survival and development of the child.

The convention sets out the rights in 54 articles. India acceded to the CRC in 1992. The nodal Ministry for the child is the ministry of women and child development. India has also ratified the two optional protocols on sale and trafficking of children and child pornography and the use of children in armed conflict. Some of the core principles in the CRC are:

1. The right to survival and development.
2. Respect for the best interests of the child as a primary consideration.
3. The right of all children to express their views freely on all matters affecting them.

The right of all children to enjoy all the rights of the CRC Without Discrimination of any kind. The Convention has inspired a process of national implementation and social change in all regions of the world. Including:

1. Incorporation human rights principles into legislation.
2. Establishing interdepartmental and multidisciplinary bodies.
3. Developing national agendas for children.
4. Widening partnership for children.
5. Promoting Ombudpersons for children or commissioners for children's rights.
6. Assessing the impact of measures on children.
7. Targeting child survival and development.
8. Implementing the principals of non – discrimination.
9. Developing justice systems for children.



#### CHILD RIGHTS IN INDIA

India is the party to the UN Declaration on the rights of the child , 1959 . Accordingly it adopted a national policy on children in 1974. The policy reaffirmed the constitutional provisions for adequate services to children , both before and after birth and through the period of growth to ensure their full physical , mental and social development.

Accordingly, the government is taking action to review the national and state legislation and bring it in line with the provisions of the convention. India is also a signatory to the world declaration on the survival , protection and development of children. The Department of women and child development under the ministry of human resource development a national plan of action for children as a commitment made at the world summit. The priority areas include health, nutrition, education, water, sanitation and environment.

#### CONSTITUTION OF INDIA

The constitution of India guarantees all children certain rights which have been specially included for them.

1. Right to free and compulsory elementary education for all children in the 6 -14 year age group[Art- 21A].
2. Right to be protected from any hazardous employment till the age of 14 years [Art-24].
3. Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength [Art-39[e].
4. Right to equal opportunities to develop in a healthy manner and in conditions and freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment [Art-39[f].

#### LEGAL AND LEGISLATIVE SAFEGUARD

In tune with the global endeavor to ensure wellbeing of its children, the Indian government also had initiated endeavor through different legislative acts.

1. *The child labour [prohibition and regulation] Act 1986*. This act provides for prohibition of the engagement of children in certain employments and for regulating the conditions of work of children in certain other employments.
2. *Amendments to the child labour [protection and regulation] 1986 amended in 2015*. Employment of children below 14 years prohibited in all occupations and processes and age of prohibition of employment linked to age under right of children to free and compulsory education Act, 2009.
3. *The Infant milk substitutes, feeding bottles and infant foods Act 1992 amended in 2003*. Aimed at promoting breast feeding of newborn children and infants. It also looks to ensure that infant foods are regulated and used appropriately.
4. *The Juvenile Justice [care and protection of children] Act 2000*. It is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in needs of care and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children.
5. *Amendment to the Juvenile Justice [care and protection of children] Act 2006*.

The JJ Act 2000 was subsequently amended and hereafter referred to as the principal Act. This Act forms the legal system and framework for the care protection and treatment and rehabilitation of children of both categories.

6. *JJ Bill – 2015*. The new set allows Juveniles in the age group of 16-18 involved in Heinous offences , to be tried as adults. The Act came into force from 15-jan-2016.
7. *The prohibition of child marriage Act-2006*. The object of the Act is to prohibit solemnization of child marriage and connected and incidental matters.

This new Act is armed with enabling provisions to prohibit for child marriage protect and provide relief to victim and enhance punishment for those who abet, promote solemnize such marriage.

8. *The National Commission for protection of child rights*. It was set up in March 2007 under the commission for protection of child rights Act-2005. The Commission's mandate is to ensure that all laws ,policies,



programmes and administrative mechanisms are in consonance with the child rights as enshrined in the constitution of India.

9. *The Right of children to free and compulsory Education Act /Right to Education[RTE]*. The 83<sup>rd</sup> amendment bill of the constitution of India was under consideration in the parliament to ensure children the fundamental right to education .RTE is an Act of the parliament acted on 4-Aug-2009 which describes the modalities of the importance of free and compulsory education for children between 6-14 in India under Art 21[a] of the constitution.

10. *The protection of children from sexual offences Act-2012*. It recognizes almost every known form of sexual abuse against children as punishable offence. The abuse is a glimpse of the efforts by the law makers of India to ensure that there are enough legal safeguards for the children of this country against all forms of exploitations.

Among the different efforts to reach out to the children in need- CHILDLINE was established in June 1996 by Jeroo Billionoria [Tata Institute of social sciences, Mumbai] as an experimental project. Subsequently government of India established the CHILDLINE across India in 1998-99 under ministry of women and child development as an umbrella organization to support and monitor services across India, while also serving as link between the ministry and various working the field.

CHILDLINE India Foundation [CIF] is the nodal agency of the union ministry of women and child development acting as the parent organization for setting up, managing and monitoring the CHILDLINE 1098 service all over the country.

CHILDLINE 1098 service is a 24 hour free emergency phone outreach service for children in need of care and protection.

Another landmark effort by the government of India was to bring out a comprehensive National Policy for children on the 26<sup>th</sup> April 2013 the government had adopted the national policy for children through a resolution to reiterate the commitment to the rights based approach for children.

#### A LIST OF ACTS AND LAWS FOR CHILD PROTECTION

Below is a comprehensive list of Acts and other laws of the land for the protection and care of the children in India.

1. Protection of children from sexual offences Act 2012.
2. Bonded labour system[abolition] Act 1976.
3. Children [Pledging of labour]Act 1933.
4. Child labour [Prohibition and regulation]Rules 1988.
5. Child labour [prohibition and regulation]Act 1986.
6. Commission for protection of child Rights Rules 2006.
7. Commission for protection of child Rights [Amendment]Act 2006.
8. Convention on the Rights of children[ CRC]
9. Factories Act 1948.
10. Guardians and wards Act 1890.
11. Immoral Traffic [Prevention]Act 1956.
12. Prohibition of Child Marriage Act 2006.
13. Young Persons [Harmful Publication]Act 1956.

#### SUMMARY AND CONCLUSION

It was only in 1990 that the Convention of the rights of the child was ratified by the world . Subsequently the Indian government had effectively made several enactments to protect the legal interests of the children in the country. The Judiciary of the Country is now geared to combat situation warranting legal action against offenders of victims involving children.

The efforts are though visible but the question remains that how effective the teeth of the Judiciary is to contain the growing crime against children.



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## SUGGESTIONS

1. Awareness through human rights commission.
2. Training and educating about human rights.
3. Adult education.
4. Role of media.
5. Law reform and legal aid.
6. Role of NGO.