



# Child Rights and Future of Nation: Issues and Challenges from National and International Perspectives

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## Abstract:

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity. The State is responsible for ensuring that childhood is protected from exploitation and moral and material abandonment. The Constitution of India mandates 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.” The Indian National Government has also accepted to subscribe to the values and principles of the United Nations Convention on the Rights of the Child (CRC) and to implement the following four principles of the CRC to protect the children in India: the right to be heard, the right to non-discrimination, the primary consideration of the child's best interests and the right to life and development. As a State Party to the United Nations, India has ratified the CRC, as well as several other UN resolutions on children's rights.

## 1. Introduction

Children on account of their tender age and immature mind need special care and protection. They have certain special rights and legal entitlements that are being acknowledged nationally and internationally. The constitution of India recognized the rights of children for the first time and included several articles dealing with their liberty, livelihood, and development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous industries. Socially and physically children are the weakest element of the society. They are not responsible for many of the cases and do not deserve to suffer. They have no say in any of the matters of evils like war or external debt. Children are the future; by investing in them societies will have a bright future?

## 2. Right to education

**Article 21-A** of the constitution states that “right to education-the state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law determine.” The Supreme Court in its liberal interpretation of life and liberty as under Article 21 held that the term liberty not only includes liberty but also includes livelihood but also the right of human beings to live with dignity and that also includes the right to education, and therefore, right to education is a fundamental right under the constitution. The Mohini Jain case came to be fortified by the supreme courts subsequent constitution bench of Unnikrishnan's case, which held that right to education, can be restricted to primary educational level and not to higher secondary level.

**Article 45 Provision for early childhood care and education to children below the age of six years-**

The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

This article has been substituted by the Constitution (eighty-sixth amendments) act, 2002 which received assent of the President on Dec. 12 2002. By this amendment a new Article 21-A providing for right to education has also been inserted. This is in keeping with the hope expressed in the Supreme Court in Unnikrishnan and Mohini Jain that conversion of the State's obligation under Article 45 into a fundamental right would help achieve the goal at a faster speed. This is now also a fundamental duty of parents and guardians to educate such children as provided in clause (k) of Article 51-A.

Article 45 states the "provision for free and compulsory education for children- the State shall endeavor to provide, within a period of ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years". However this goal has not been achieved even after fifty years of the commencement of the Constitution. It was held that there was nothing to prevent the State from discharging that solemn obligation through the government and aided the schools, and Article 45 does not require the obligation to be discharged at the expense of minority communities.

It was held in the case of Mohini Jain v. state of Karnataka and others, AIR 1992 SC 1858. The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under part III. These principles have to be read into the fundamental rights. Both are supplementary to each other. The state is under the constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under part III could be enjoyed by all. Without making "right to education" under Art. 41 of the constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate

"**Right to life**" is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life Unnikrishnan, J.P and other v. State of Andhra Pradesh and others AIR 1993 S.C. 2178 "The first question is whether the right to life guaranteed by Article 21 does not take in the right to or not. It is then that the second question arises whether the State is taking away the right as at present does not mean that right to education is not included in right to life. The content of right of life is not to be determined on the basis of existence or absence of threat of deprivation.

The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so it does not mean the transferring Article 41 from Part IV to Part III. The judges stated that they were merely relying upon Article 41 to illustrate the content of the right to education with the right to life. The judges further stated that it is improper to believe that the State would not provide education to its people even within the limits of its economic capacity and development. Thus the court in the case of Unnikrishnan overruled the judgment of Mohini Jain on the basis that right to education covers only the primary level education and not the secondary level.

**3. Rights against exploitation**

**Article 23** states that "prohibition of traffic in human beings and forced labour.

(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this Article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Traffic in human beings means to deal in men and women like goods, such as or to sell or let or otherwise dispose them of. It would include traffic in women and children for immoral or other purposes. The Immoral Traffic (Prevention) Act, 1956 is a law made by parliament under Article 35 of the constitution for the purpose of punishing acts which result in traffic in human beings.

In pursuance of Article 23 the bonded labour system has also been abolished and declared illegal by the bonded labour system (abolition) act, 1976. To ask a person to work against his will and not provide him remuneration can be a breach under Article 23 of the Constitution. In no circumstances can a man be required to work against his will.

The Indian penal code and the criminal procedure code have separate provisions prohibiting traffic in human beings. According to the penal code, selling, letting for hire or otherwise disposing of, or buying, or hiring or otherwise obtaining possession of any girl under the age of 18 years for the purpose of prostitution or for any unlawful or immoral purposes is also an offence. In 1958, by a central enactment organized prostitution as a profession has been abolished all over the country and the running of brothels has been made an offence. **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 be engaged in any hazardous employment” The court in *M.C.Mehta v. State of Tamilnadu* noted that menace of child labour was widespread. Therefore, it issued wide ranging directions in the context of employment and exploitation of children in Sivakasi prohibiting employment of children below the age of 14 and making arrangements for their education by creating a fund and providing employment to the parents or abled bodied adults in the family. These directions were reiterated in *BandhuaMuktiMorcha v. Union of India*, concerning the employment of children in carpet weaving industry in India. The apex court took note of the sociological angle and possible resistance from parents and society to the total elimination of child labour. That is why Article 24 limits the prohibition to only factories, mines and other hazardous employment. The court had clearly lost an opportunity of interpreting Article 24 as a charter for total elimination of child labour, and making it compulsory for children to be found in school upto primary. But even after 10 years after the child labour (prohibition and abolition acts, 1986, the act once again continues permitting child labour where it is not prohibited.

#### 4. Child labour

**Articles 23 and 24** of the constitutions determine the term “child labour”.

##### **The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**

This act was enacted on 23rd December 1986 by the parliament and was enforced on 26th may 1993 by the central government. The act was ineffective for over 8 years due to the inactiveness of the state and central government. The object of the act is

- (i) ban on the employment of children i.e., those who haven't completed their fourteenth year, in specified occupations;
- (ii) lay down a procedure to decide modifications to the schedule of banned occupation and processes;
- (iii) regulate the conditions of work of children and Adolescents in employment where they are not prohibited from working;
- (iv) lay down enhanced penalties for employment of children in violation of the provisions of this act, and other acts which forbid the employment of the children;
- (v) to obtain uniformity in the definition of “child” in the related laws.

The intention of this act was to ban the engagements of child labour in certain employments and to regulate in areas where it has not been prohibited. It provides power to the government to make rules

with reference to health and safety wherever the employments of children and adolescents are permitted. Night work for children is prohibited. The hours of work for the children are also to be considered by the state and the central governments. The act enables the governments to appoint inspectors to enforce the provisions of the act and it has also provided stringent penalties including imprisonment for violations of the provisions of the act.

### **5. Juvenile Justice (Care and Protection of Children) act 2015**

Juvenile delinquents have been looked upon differently by persons. To a lawyer, they are minors who are accused of offences from which they are immune to the punishments that are usually administered to adults. To psychologists they are youngsters whose social behavior patterns show deviations from acceptable norms. Judges take a different view by stating that they are neglected children who have been brought into the world by parents who have turned their back on their offsprings and let them shift for themselves. Juvenile delinquency is indeed a social problem. Economic insecurity, under nourishment, inadequate clothing and lack of necessary medical care may lead to delinquency. The state has to give these children better care and make them good citizens. The government is doing its best to contain the problem of juvenile delinquency. In India the first legislation concerning children was enacted in 1850 when the apprentices act was passed. The act provided that the father or guardian could bind the child between the ages of 10 and 18 years. Magistrates were authorized to be the guardian of each destitute child.

The criminal procedure code, 1973 contained some provisions dealing with juvenile delinquency. Section 27 of the code reads “any offence not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of sixteen years, may be tried by the court of a chief judicial magistrate, or by any court specially empowered under the children act 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders”.

Thus the state has the duty of according proper care and protection to children at all times, as it is on their physical and mental wellbeing that the future of the nation depends.

A child produced before the Juvenile Justice Board charged with Bailable or Non Bailable Offence, be released on bail with or without sureties. The Board shall not release him, if the release is likely to bring him into association with any ill-reputed criminal or may expose him to moral danger. Such a child must be committed to a place of safety. The officer in charge should inform the parents or the guardian to be present when the child is produced before the Juvenile Justice Board. The officer in charge should also inform the Probation Officer.

### **6. Aims of Juvenile Justice**

The Juvenile Justice system shall emphasize the wellbeing of the child in conflict with the law must be in proportion to the circumstances of both the offender and the offence. The major objectives of juvenile justice are

1. The wellbeing of the Child in Conflict with the Law.
2. ‘the principle of proportionality’, which is intended to curb ‘punitive sanctions expressed in just deserts in relation to the gravity of the offence’, and to ensure that the response to the younger offender be based on the consideration not only of the gravity of the offence but also of the personal circumstances’.
3. while the reaction must aim to ensure the welfare of the young offender, it must not go beyond necessity and, therefore infringe upon the rights of a young individual.

### **7. Legal Investigation and Prosecution**

The Beijing rules of 10(initial contact), 11(diversion), 12(special police units) and 13(detention pending trials) address themselves to the fair and humane approach that must be shown, and the

procedures that must be scrupulously followed by the police upon the apprehension of the juvenile, and the care humanness, firmness and solicitude for welfare that must be consciously bestowed by the personnel on his admission into the juvenile detention center. Initial contact-upon the apprehension of the juvenile the parents must be immediately notified of such apprehension. The initial contact between the juvenile and the police and the other agents of the juvenile homes must respect the wellbeing of the juvenile and must not harm him or her.

### 8. The rights of a delinquent child

There is to be a sharp and basic focus on the procedural safeguards that guarantee a fair and just trial of every Child in Conflict with Law before a competent authority. Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to council. The right to the presence of parents, etc. shall be guaranteed at all stages.

### 9. The principle of non age

A child of below a particular age is not responsible for any criminal act committed by him because of his emotional, mental and intellectual immaturity and sufficient incapacity to distinguish between right and wrong.

The rights given by the Indian Constitution can be categorized in the following principles.

Principle 1: rights to every child with no distinction on the race, color, creed, language, religion, property etc...

Principle 2: the child shall enjoy special protection, shall be given opportunities and to enable him to develop physically, mentally, morally, spiritually in a normal manner

Principle 3: the child shall be entitled from his birth to a name and a nationality

Principle 4: the child shall enjoy social security, nutrition pre-natal and post-natal care etc.

Principle 5: the child who is physically, socially or mentally handicapped shall be given special treatment

Principle 6: the child, for a full and harmonious environment needs love and care. A child shall not be separated from his mother. Social and public authorities should give special care that has no family and those with no adequate support

Principle 7: the child is entitled to receive proper education. It shall be free and compulsory at least in the elementary stages. The child shall be given full opportunity for play and recreation

Principle 8: the child must be the first to receive protection and relief

Principle 9: the child shall be protected from any forms of cruelty, neglect exploitation. The child shall not be admitted to employment before an appropriate minimum age, which would prejudice his health.

### 10. Conclusion

As Justice Bhagwati has quoted "the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into the maturity, into fullness on physical and vital energy and most breadth, depth and height of its emotional, intellectual and spiritual being". Children require guidance and support. They do not know the technicalities of life. It is for citizens like us to take their hand and show them the right way. The social workers play an important role in eradicating social evils and thus they is need for stricter analysis on their qualification and professional capacity. Although there is much legislation by the government to curb many social evils against children, the governments are not taking any enough steps to ensure that children, the future citizens of our country are protected. These are the children that would lead our country to a healthy and prosperous nation. The final affirmation on child rights is possible only if there is international cooperation and implementation of the right to development.

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