



Children and human rights: An overview

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Abstract

The paper highlights the children rights that are entitlements and some of them are justifiable in a court of law, but they are not tangible. Protection is one of these rights. But Child Protection is more than a right. It is a framework or system by which the rights of a child can come to be. The framework consists of various duty bearers such as the departments of the government, police, school, civil society, who all have roles to play to ensure that a child's rights are met, and in the case that a child's rights are violated that the violator be brought to justice and care be provided to the child. Child protection is not only treatment, but should also be preventive. Risk management needs to take place to reduce the risk of violation of child rights in any given circumstance or space. Child protection is hence the means through which all other rights of a child can be upheld. For example, a child has a right to live a normal childhood in a family environment. The child protection framework needs to first take steps to ensure families are able to survive by providing them when health, education, and food for free or at minimal cost.

Keywords: Children rights, child protection, human rights, laws

Introduction

Children are the most vulnerable section of our society. They are exploited in various ways. To protect them from exploitation and provide them opportunities for harmonious development, the United Nations has focused its attention on their problems since 1946 when the Temporary Social Commission of the Economic and Social Council recommended that the provisions of the Geneva Declaration of 1924 should be treated as binding on the peoples of the post Second world war world. The Geneva Declaration of 1924 was adopted by the Assembly of the League of Nations and it incorporated following five measures.

1. The child must be given the means requisite for its normal development, both materially and spiritually.
2. The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured.
3. The child must be first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

The 1959 Declaration on the Rights of Child. On the basis of above provisions of the General Declaration of 1924, the Temporary Social Commission prepared in 1950, the draft Declaration on the Right of Child which was adopted by the General Assembly of the United Nations on 20 November, 1959. It contained following ten principles which formed code for the well-being of every child:

1. The child shall enjoy all the rights set forth in this Declaration. All children, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion,

national or social origin, property, birth or other status whether of himself or of his family.

2. The child shall enjoy special protection and shall be given opportunities and facilities by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in the condition of freedom and dignity. In the enactment of laws for this purpose. The best interests of the child shall be the paramount consideration.
3. The child shall be entitled from his birth to a name and nationality.
4. The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health, to this end, special care and protection shall be provided both to him and to his mother including adequate prenatal and postnatal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.
5. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.
6. The child for the full and harmonious development of his personality needs love and understanding. He shall, whenever possible, grow up in the care and under the responsibility of his parents and in any case in an atmosphere of affection and a moral and material security, a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and public authorities shall have the duty to extend particular care to children without a family and to those without means of support. Payment from state and other assistance towards the maintenance of children or large families is desirable.
7. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him on a basis of equal opportunity to develop his abilities, his

individual judgement, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that responsibility, lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education, society and the public authorities shall endeavour to promote the enjoyment of this right.

8. The child shall in all circumstances be among the first to receive protection and relief.
9. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age, he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education or interfere with his physical, mental or moral development.
10. The child shall be protected from practice which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal consciousness that his energy and talents should be directed to the service of his fellow men.

The United Nations Children's Fund (UNICEF): The General assembly established the United Nations International Children's Emergency Fund (UNICEF) on 11 December 1946. The purpose of this fund was to aid the children and adolescents of those countries which had been the victims of aggression. It was need based assistance and provided to the children without discrimination of any way, such as. race, creed, national status or political belief. However, on 6 October, 1953, the General Assembly decided that the Fund would continue to aid the children in the developing countries and in those countries, which had been devastated by war or other calamities. The name of the United Nations International Children's Emergency Fund (UNICEF) was changed and hence forth it is known as the United Nations Children's Fund but the acronym (UNICEF) has been retained. The Economic and Social Council supervise and review the work of the UNICEF periodically. The operation of UNICEF is controlled by the Executive Board. It consists of 41 Members elected by the Economic and Social Council for a term of three years. The main function of UNICEF is to aid the Governments of developing countries in improving the life of children. It acts on the notion that since the children are the means as well the beneficiaries of the national development, the improvement in the quality of life of children would lead to the sustained economic and social progress.

International Year of the Child (1979) - The General Assembly decided on 21 December 1976 to observe the Year 1979 as International Year of Child with following objectives.

- a. To provide a frame work for advocacy on behalf of children and for enhancing the awareness of the special need of children on the parts of decision makers and the public:
- b. To promote recognition of the fact that programmes for children should be an integral part of economic and

social development plans, with a view to achieving, in both the long term and short term, sustained activities for the benefit of children at the national and international level.

The International Year of Child 1979 was observed as the twentieth anniversary of the adoption of the 1959 Declaration on the Rights of Child. It was marked by activities, at national, regional and international level, for the improvement of life of the children. UNICEF has provided with the essential leadership.

The Convention on the Rights of the Child - The United Nations Convention on the Rights of Child was adopted by the General Assembly on 20 November, 1989 and it came into force on 2 September 1990 on the thirtieth day after the date of the deposit with the Secretary General of the United Nations of the Twentieth Instrument of Ratification or Accession. The Convention is most widely accepted human rights Instrument. It has been ratified by 192 countries of the world. Only two countries, i.e., United States and "Somalia had not ratified but they also have shown their willingness to ratify by formally signing the Convention.

The 1959 declaration of the Rights of the child contains the general principle regarding the improvement in the condition of children. Although the declaration was adopted by the Governments but it was not binding. The Convention on the Rights of Child, on the other hand, has the binding obligation and requires the state parties to comply with the provision of the convention. To strengthen further the implementation of rights recognized in the convention on the Rights of the child two optional protocols, on the involvement of children in the armed conflict and on the sale of the children, child prostitution, and pornography were adopted. These optional protocols entered into force, respectively on 12 February and 18 January 2002.

The convention on the right of the child consists of 54 articles and are divided into preamble and three parts, Part I (articles 1-41) deals with the rights that a child should have Part II (articles 42-45) deals with question of implementation and part II (articles 46-54) includes a number of final clauses.

Preamble: The states parties to the present convention, recalling that in all the universal declaration of Human rights, the united nations has provided that childhood is entitled to special care and assistance, have recognized that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding. Again, the states parties considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, have recognized that in all countries, there are children living in exceptionally difficult situations, and that such children need special consideration. Taking each people for the protection and harmonious development of the child, the states parties have recognized the importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries.

Who is Child – Article 1 of the convention defines the term "child". It provides that for the purpose of this convention a child means every human being below the age of eighteen

years unless, under the law applicable to child, majority is attained earlier.

Kinds of rights of child – The various rights of child as contained in the convention on the Rights of Child may be discussed under following headings:

- a. The general principles of the convention – Followings are the general principles which must be considered by the states parties while ensuring to each child the rights set forth in the present convention.
 1. Protection against discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, properly, disability, birth or other status.
 2. The best interest of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law. Administrative authorities or legislative bodies.⁸⁵ The best Interest of the child is matter of such paramount consideration that the Supreme Court of India permitted the custody of children to their mother, a divorcee and living in India after divorce in America even against the order of Court in USA vesting the sole custody of children with father-living in USA.
 3. The respect of child's views. The child who is capable of forming his or her own views has the right to express their views freely in all matters affecting the child and it shall be given due weight in accordance with the age and maturity of the child.
1. **Civil rights and liberties of the child:** A Child enjoys following civil rights and liberties:
 - a. Every child has the inherent right to life and shall be ensured to the maximum extent possible the survival and development.
 - b. **Right to name and Nationality:** Every child shall have a right to be registered immediately after birth, the right to a name and nationality and the right to know and be cared for. by his or her parents.
 - c. **Right to identity:** Every child has right to preserve his or her identity, nationality, name and family relations.
 - d. **The Right to freedom of expression:** Every child has the right to freedom of expression which includes freedom to seek, receive and impart information and ideas of all kinds.
 - e. Every child has the right to freedom of thought, conscience and religion.
 - f. Every child has the right to freedom of association and freedom of peaceful assembly.
 - g. **The Right to privacy:** No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, or to unlawful attacks on his or her honour and reputation.
 - h. Children of ethnic, religious or linguistic minorities or of indigenous populations shall have right to enjoy their own culture and to practice their own religion and language.⁹⁴

- i. No child be subjected to torture or other cruel in human or degrading treatment or punishment including capital punishment of life imprisonment without possibility of release.

Right to family environment: A child is entitled to the following rights

1. A child has right not to be separated from his or her parents, except when competent authorities, subject to judicial review, determine in accordance with applicable law and procedures, that such separation in necessary for the best interest of the child.
2. Parents or the legal guardians have the primary responsibility for upbringing and development of child. The state shall render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities.
3. A child is entitled to family environment. In case a child is temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance provided by the state.
4. Adoption shall only be carried out in the best interest of the child, with the authorization of the competent authorities and with the safeguards for the child. Inter country adoption should not result in improper financial gains for those involved.
5. Illicit transfer of children to abroad and their non-return must be prevented. To this end, the state parties should conclude bilateral or multilateral agreements.
6. The child has right to protection from all forms of physical, or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse.
7. The children who have been placed by the authorities for the purpose of care, protection or treatment of their physical or mental health have right to have their placement reviewed regularly.
8. The child and his or her parents have right to leave any country and to enter their own for purpose of reunion or the maintenance of child parent relationship.
9. The state must secure the recovery of maintenance for the child from the person having financial responsibility for him or her.
1. **The Right to health:** A child has following rights in respect to his or her health and well beings.
 - a. The Child's survival and development must be ensured to the maximum possible extent.
 - b. Mentally or physically disabled child has the right to enjoy full and decent life, In conditions which ensure, dignity, promote self-reliance and facilitate the child's active participation in the community
 - c. A child has right to enjoy the highest attainable standard of health as well as treatment of illness and rehabilitation of health which also means reducing infant and child mortality and combating malnutrition.
 - d. Every child is entitled to benefit from social security, including social insurance, in accordance with national law.
 - e. The children of working parents have right to benefit from child care services and facilities for which they are eligible.
 - f. Every child has right to standard of living adequate for the child's physical, mental, spiritual, moral and social development.

- 2. Educational Right of the Child:** Every child has following educational rights:
- a. Education, including primary education compulsory and available free of charge to all; secondary, general and vocational training, must be ensured by the State in order to promote (a) the development of the child's personality, talents and mental and physical abilities to their fullest extent; (b) the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, languages 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 civilisations different from his or her own; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) the development of respect for the natural environment.
 - b. Every child has the right to leisure, play, recreational and cultural activities appropriate to the age of the child and the right to participate freely in cultural life and acts.
- 3. The Right to special protection in emergency:** Persons who have not attained the age. of fifteen years cannot take a direct: part in hostilities and also cannot be recruited into armed forces. Rehabilitative care must be made available to children who are victims of armed conflict.
- 4. The right of child in relation to administration of justice:** The administration of juvenile justice must proceed by considering the child's age sense of dignity and worth to reinforce and promotion of the child's sense of dignity and worth to reinforce the child's respect for human rights and the fundamental freedom of others. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner, which considers the need of the persons of his or her age. In particular every child deprived of liberty shall be separated from adults unless it is considered to the child's best interest not to do so. A child who is detained shall have right to maintain contact with his or her family and to prompt access to legal and appropriate assistance. No capital punishment or life imprisonment shall be imposed for offence committed by persons below eighteen years of age. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- 5. The Right against exploitation:** every child has following rights against exploitation
- a. The right against exploitation of child labour. Every child is entitled to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health, or physical, mental, spiritual, moral or social development. The state parties must provide for a minimum age for

- b. admission to employment and for appropriate regulations of the hours and conditions of employment.
- b. The right to protection against drug abuse: Children are entitled to be protected from use of narcotic drugs and psychotropic substances and to be protected against being used in the illicit production and trafficking of drugs.
- c. The right against sexual exploitation, children have right to be protected from all forms of sexual exploitation and sexual abuse as well as to be prevented from being engaged in any unlawful sexual activity, used in prostitution, pornographic performances and material.
- d. The right against abduction, sale or traffic, states parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction or sale of or traffic in children for any purpose or in any form.
- e. The right against other forms of exploitation, states parties shall protect the child against all other forms of exploitation prejudicial to any aspect of the child's welfare.

Constitutional right of children in India

Right to Equality (Article 14):

Equality before law, i.e., equal treatment and protection under law.

All children in similar circumstances are required to be treated in a similar manner, and if not so treated, such treatment can be challenged on the ground of discrimination and arbitrariness.

Right to freedom of speech and expression (Article 19 (1))

Right to Life

- Article 21: of the constitution which deals with right to life has been interpreted by the Courts to include "right to health".
- Article 41: The state is required to take the steps to secure educational opportunities and facilities.
- Article 47: Of the constitution of India states that the improvement of public health is one of the primary duties of the government.
- Cultural, religious and linguistic Rights:
- Article 25: Freedom of conscience and freely to profess, practice and propagate of religion to all citizens. (Article 25)
- Article 28 (3): Freedom to attend religious instructions or religious worship in certain educational institutions.
- Article 29 (1) All citizens have right to conserve their distinct language, script or culture of its own.

Right to Education

- **Article 21 A:** 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 39 of the Constitution of India states that the government must direct its policy towards giving children opportunities and facilities to develop in healthy manner.
- Right against Economic exploitation:
- **Article 23:** Prohibits trafficking in human beings and forced labour any contravention of this provision is punishable under law.

- **Article 24:** Prohibits the employment of a child below 14 years in any factory or mine or any other hazardous employment
- **Article 39 (e):** The state is required to ensure protection of children of tender age from abuse, and from entering vocations unsuited to their age and strength.

Right to Parental Care

Hindu Minority and Guardianship Act, 1956.

Father is a natural guardian of a child below 5 years and mother is the de facto guardian (Sec 6)

Hindu Adoptions and Maintenance Act 1956

Legal duty of parental care is imposed on parents irrespective of any property ancestral or otherwise (sec 20)

Hindu Marriage Act 1955

Parental duty to maintenance a child in case of divorce (Sec 26)

Special Marriage Act 1954

In case of divorce, parental duty to maintain the child (Sec 38)

Muslim Personal Law

Duty of a father to maintain his son till he attains puberty and daughter till she gets married.

Marriage Laws (Amendment) Act 1981

Maintenance of children born out of marriage, consistent with the financial capacity of parents (Sec 13c)

Indian Penal Code 1860

Penalty for exposure and abandonment of a child under 12 years by parent or guardian (Sec. 317)

juvenile Justice Act 1986

Penalty for abandonment or wilful neglect of a child (Sec. 41)

Code of Criminal Procedure (1973)

Monthly allowance not exceeding Rs. 500 for a child below 18 years in case of neglect or refusal to be maintained by parents, penalty may be imposed in case of default. (Sec. 125)

Indian Legislative Landmarks on Child Labour.

The Factories Act, 1948

Raises minimum age of employment in factories to 14 years.

Employment of Children (Amendment) Act, 1949

Raises minimum age to 14 years for employment. 1950: The Constitution of India; Directive Principles of State policy.

1952: Employment of Children (Amendment) Act.

Prohibition of thereof between the age of 15 & 17 years.

The Plantation Labour Act 1952.

The Mines Act, 1952.

Prohibits the employment under 15 years. Under-ground work condition (i) Complete 16 years of age., (ii) Physical fitness certificate from surgeon.

The Factories (Amendment) Act, 1954.

Includes prohibition of employment at night under 17 years of age.

The Merchant Shipping Act, 1958.

Prohibits children under 15 years to be engaged to work in any capacity in any ship.

The motor transport Act, 1961

Prohibits the employment of children under 15 years of age.

The Apprentices Act, 1961.

Prohibits a person under age of 14 years. 1966: The Beedi & Cigar workers.

Prohibits - (i) Employment under age of 14 years. (ii) To Work at night between 14 - 18 years of age. Employment below the Age of 15 years in railway premises.

Employment of Children (Amendment) Act, 1978

Prohibits employment below the age of 15 years in railway premises.

Conclusion

Historically children are evidences that the life of young subjects were strictly monitored. Many earlier Codes, prohibited punishment of children, on the ground that they are not capable to distinguish the good from evil. 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 juristic concept is that child being legal person is entitled to the protection of law, developed during the last two centuries, following industrialization and the emergence of women's rights. The advent of industrial revolution brought about the enactment of child labour laws, some of them dating back to the first half of 19th century. 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, 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. 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.

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