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“CHILDREN’S RIGHTS: A CRITICAL OVERVIEW”

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ABSTRACT:

The significance of children as an integral part of our society and as tomorrow’s nation builders can’t be denied. Hence, the present essay/ article focuses on the contemporary international as well as national legal regime for the care and protection of children from any sort of discrimination, exploitation or abuse and for their overall development. However, even after the existence of such robust legislations for the protection of children, there are rampant offenses committed against them in every society of the globe. The article thus calls upon every individual to help curb the menace of violence and variety of offenses committed against children. The cause requires stringent social and legal actions on part of the people as well as the states. We as members of the society must safeguard the children from any kind of torture or discrimination in order to ensure a safe and bright future of our country as well as the international community.

▪ **INTRODUCTION:**

The Children's rights broach to the human rights of children with noteworthy awareness towards the rights of special protection and care accorded to minors owing to their particular vulnerability and their essence as the future generation. A nation’s children are a “supremely important national asset”, and the future well-being of a nation depends upon how its children grow and develop.¹ It is the duty of the state to look after a child to ensure full development of its personality²

¹Laxmikant Pandey v. Union of India, [1984] 2 SCR 795.

²Sheela Barse and ors. v. Union of India and ors. JT [1986] 136 1986 SCALE (2)230.

The Convention on the Rights of the Child (CRC), 1989, in Article 1, elucidates a “child” as "any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier."

Children's rights encompass their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and being physically, mentally and emotionally free from abuse, criminal laws appropriate for the age and development of the child, equal protection of the child's civil rights, and freedom from discrimination on the basis of its race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics.

▪ **THE HISTORIC DEFINITIONS OF CHILDREN’S RIGHTS:**

[Sir William Blackstone](#) appreciated three parental obligations to the child: maintenance, protection, and education. In modern language, the child has a right to receive these from the parent.³

The League of Nations endorsed the Geneva Declaration of the Rights of the Child (1924), which enunciated the child's right to receive the requisites for normal development, including the right of the hungry child to be fed, the right of the sick child to receive health care, the right of the backward child to be reclaimed, the right of orphans to shelter, and the right to protection from exploitation.

The United Nations Universal Declaration of Human Rights (1948) in Article 25(2) recognized the necessity of motherhood and childhood to "special protection and assistance" and the right of all children to "social protection."

The United Nations General Assembly adopted the United Nations Declaration of the Rights of the Child (1959), which pronounced the ten principles for the protection of children's rights, including the universality of rights, the right to special protection, and the right to protection from discrimination, among other rights.

³Blackstone's Commentaries on the Laws of England, Book One, [Chapter Sixteen](#). (1765-1769).

A 1973 publication by Hillary Clinton (then an attorney) stated that children's rights were a "slogan in need of a definition".⁴

▪ **THE INTERNATIONAL LAW REGIME OF CHILDREN'S RIGHTS:**

Children's rights can be categorized into two classes of human rights under the international human rights law:

Firstly, they have the same fundamental general human rights as adults, although some human rights, such as the right to marry, are dormant until they are of age.

Secondly, they possess special human rights that are indispensable to safeguard them during their minority.

▪ **THE GENERAL RIGHTS:**

The General rights are operative in childhood and comprise the right to life, the right to security of the person, the freedom from inhuman, cruel, or degrading treatment, the right to freedom of thought, conscience and religion, the right to health care, the right to protection from economic and sexual exploitation, etc. illuminated in the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural rights (1966).

The [United Nations Human Rights Committee](#) has also interpreted Article 7 of the [International Covenant on Civil and Political Rights](#) prohibiting "cruel, inhuman or degrading treatment or punishment" to encompass children, including corporal punishment of children.⁵

The **Vienna Declaration and Program of Action (1993)** urges, in Section II para. 47, all nations, to undertake initiatives to the maximum extent of their resources at disposal, with the support of international collaboration, to attain the goals in the World Summit Plan of Action. It calls upon States to incorporate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts, particular priority should be placed on mitigating infant and maternal mortality rates,

⁴Rodham, H (1973) "[Children under the Law](#)" Harvard Educational Review. 43: 487-514.

⁵UN Human Rights Committee (1992) "[General Comment No. 20](#)". HRI/GEN/1/Rev.4.: p. 108.

reducing malnutrition and illiteracy rates and dispensing access to safe drinking water and basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally gross problem of children in extreme poverty.

Further, para 48 calls upon all states, with the buttress of international cooperation, to address the acute obstacle of children under especially difficult circumstances. Exploitation and abuse of children should be actively impeded, including by addressing their root causes. Effective steps are requisite against female infanticide, harmful child labor, sale of children and organs, child prostitution, child pornography, and other forms of sexual abuse. This influenced the adoptions of the Optional Protocol on the Involvement of Children in Armed Conflict (2000) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2000).

▪ **THE SPECIAL RIGHTS:**

The specific human rights of children embrace, among other rights, the right to a name, the right to special protection during childhood and the right to nationality⁶, the right to education, etc.

The Convention on the Rights of the Child (1989):

The United Nations 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to assimilate the full realm of human rights—civil, cultural, economic, political and social rights for children. Its execution is supervised by the Committee on the Rights of the Child. National governments that ratify it commit themselves to shield and ensure children's rights, and concur to hold themselves accountable for this commitment before the international community. The CRC is the most widely ratified human rights treaty with 196 ratifications; the United States is the only country not to have ratified it. India ratified it on 11 December 1992.

⁶Article 24, the [International Covenant on Civil and Political Rights](#); 16 December 1966.

The CRC is established on four core principles: the principle of non-discrimination (Article 2); the best interests of the child (Article 3); the right to life, survival and development (Article 6) and the right to be heard (Article 12); considering the views of the child in decisions that affect them, according to their age and maturity.

The United Nations Educational Guides for children classify the rights outlined in the [Convention on the Rights of the Child](#) as the "3 Ps": Provision, Protection, and Participation.⁷ They may be expressed as follows:

- **Provision:**

Children have the [right to an adequate standard of living](#), [health care](#), [education](#) and services, and to [play](#) and [recreation](#). These involve a [balanced diet](#), a warm bed to sleep in, and an access to [schooling](#).

- **Protection:**

Children have the right to protection from [abuse](#), neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing conduct, and realization of the [evolving capacities](#) of children.

- **Participation:**

Children have the right to [participate in communities](#) and to have [programs and services](#) for themselves. This appends children's involvement in libraries and community programs, [youth voice](#) activities, and involving children as decision-makers.

Article 19 of the Convention enjoins parties to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation". The [Committee on the Rights of the Child](#) expounds Article 19 as outlawing corporal punishment, commenting on the "obligation of all state parties to move quickly to prohibit and eliminate all corporal punishment."⁸

⁷Young-Bruehl, Elisabeth (2012). *Childism: Confronting Prejudice against Children*. New Haven, Connecticut: Yale University Press. p.10.

⁸UN Committee on the Rights of the Child (2006) "General Comment No. 8:" para. 3.

In a similar fashion, the [Child Rights International Network](#) (CRIN) categorizes the children's rights into two groups:⁹

- **Economic, social and cultural rights:**

They are affiliated to the conditions imperative to meet pivotal human needs such as food, shelter, education, health care, and gainful employment. Included are the right to [education](#), adequate housing, food, water, the highest attainable benchmark of [health](#), the [right to work](#) and the rights at work, as well as the [cultural rights](#) of minorities and indigenous peoples.

- **Environmental, cultural and developmental rights:**

They are sometimes called as the "[third generation rights](#)," and constitute the right to live in safe and healthy environments and those groups of people have the right to cultural, political, and economic development.

The [Amnesty International](#) openly advocates four particular children's rights, including the end to [juvenile incarceration](#) without [parole](#), an end to the recruitment of [military use of children](#), terminating the [death penalty](#) for people under the age of 21 years, and raising awareness of [human rights in the classroom](#).¹⁰

The **United Nations Children's Fund (UNICEF)**, originally known as the United Nations International Children's Emergency Fund, created by the United Nations General Assembly on 11 December 1946, to furnish emergency food and healthcare to children and mothers in countries that had been depredated by World War II. And it continues even today to work for their welfare.

- **THE MUNICIPAL LAW REGIME OF CHILDREN'S RIGHTS:**

- The Constitution of India:**

- The Constitution in its Part III (the Fundamental Rights) and Part IV (the Directive Principles of State Policy) guarantees under the articles mentioned below, the following rights to the children of India:

⁹Freeman, M. (2000) "The Future of Children's Rights," *Children & Society*, 14(4) p. 277-93.

¹⁰"[Children's Rights](#)" [archived](#) 2008-09-21 at the [Wayback Machine](#), Amnesty International.

PART III (The Fundamental Rights):**Article 14:**

The citizens of India, encompassing children, must be treated equally before law and must be bestowed equal protection by the law without any discrimination or arbitrariness.

Article 15(3):

Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from legislating special provisions for women and children for their benefit.

Article 21:

“No person shall be deprived of his life or personal liberty without due process of law.” A person consisting of children has the right to adequate food, shelter, clothing, etc.

Article 21-A: (The Right to Education):

It has been inserted as a fundamental right in the Indian Constitution by the 68th Constitution Amendment Act, 2002, which provisions free and compulsory education to all children under the age group of 6-14 years. In the leading case of **P. Unni Krishnan v. State of Andhra Pradesh**,¹¹ the right to education was reiterated under the right to life by the Hon'ble Supreme Court of India. The court observed that 'education is a preparation for a living and for life' and thereafter concluded with the statement that 'we hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.'

Article 23:

It secures against exploitation, interdicts traffic in humans and beggar and makes this practice punishable under law. In the landmark case of **Bachpan Bachao Andolan v.**

¹¹AIR 1993 SC 2178.

Union of India &ors.,¹²an NGO in India submitted a petition to the Apex court to take action against the use of child performers in India's traveling circuses. A study disclosed that children were being trafficked from Nepal or taken from their homes, exploited as child laborers in these circuses, and subjected to mental, physical, and sexual abuse. In recognition that this menace was in violation of child labor laws and regulations on a child's right to an education, among other national and international statutes, the Court delivered an order to refrain the employment of children in circuses, raid circuses to free children, and establish rehabilitation schemes for the child victims. This case is an important victory for children's rights in India, where parents often sell their children to work at a young age, and also displays the willingness of the Supreme Court to hear petitions from NGOs, offering a foremost avenue for human rights reform.

Article 24:

It protects children below the age 14 from working in factories, mines or other hazardous employment.

PART IV (The Directive Principles of State Policy):

Article 39(e) and (f):

They provide that the State shall, in particular, direct its policy towards securing to "ensure that the health and strength of workers, men and women and the tender age of children are not abused" and "that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and that the childhood and youth are harbored against exploitation and against moral and material abandonment.

Article 45:

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

¹²(2011) SCC (5) 1.

Article 47:

It states that the State shall heed to the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Article 243G:

It provides for the institutionalization of child care by seeking to entrust programs of Women and Child Development to village Panchayats and other local bodies. (Item 25 of Schedule 11).

The Prohibition of Child Marriage Act, 2006:

The Prohibition of Child Marriage Act, 2006 was implemented in India from November 1, 2007. UNICEF has prescribed the marriage of girls before the age of 18 years as a child marriage and for boys this age is 21 years and its abrogation is considered as the violation of human rights. The government of India passed The Child Marriage Act, 2006 to prevent the institution of child marriages in India. The Child Marriage Restraint Act, 2006 was brought in place of the Child Marriage Restriction Act, 1929.

The Child Labor (Prohibition and Regulation) Act, 1986:

The most controversial legislation related to children's right in India is the "Child Labor (Prohibition and Regulation) Act, 1986. This Act has clearly mentioned that how children can work and where they are allowed to work.

In the case of **C. Mehta v. State of Tamil Nadu**¹³, the employers of children in matchsticks and crackers factory were punished with fine of Rs.20, 000 for every child employed in contravention of the provisions of the Child Labor (Prohibition and Regulation) Act. Such children were directed upon discontinuation of their employment and to be assured education in a suitable institution by the state government.

Also, the Bandhua Mukti Morcha is an organization that works for the release of bonded laborers in India. They sent a letter to the Supreme Court regarding bonded labor rampant

¹³AIR 1997 SC 699.

in Faridabad district of Haryana in 'inhuman and intolerable conditions'. The court converted the letter into a writ petition and after confirmation, by the investigating team appointed by it, of the existence of the said bonded labor system, the court commanded in the landmark case of **Bandhua Mukti Morcha v. Union of India**¹⁴:

- The State Governments to constitute Vigilance Committees in each district and its subdivisions.
- The District Magistrate to take up as top priority the task of identification of bonded labor.
- The State Government to concentrate on rehabilitation of bonded laborers and evolve effective programs for this purpose.

▪ **The Right to Education Act, (RTE Act) 2009:**

The RTE Act, 2009 also makes provision to impart free and compulsory education to all children under the age group of 6-14 years. This law presses all the government aided/private schools in India to provide at least 25% seats to the children of economically backward sections of the societies.

▪ **The Immoral Traffic (Prevention) Act, 1956:**

The Immoral Traffic (Prevention) Act, 1956 is the primary legislation for the prevention of trafficking for sexual exploitation of women and girls in India.

▪ **The Protection of Children from Sexual Offences Act, (POCSO Act) 2012:**

This law proscribes and penalizes child sexual abuse in any form like the display of pornography before children and any kind of involvement of children in pornographic content and even storage of pornography related to them is also made an offence.

▪ **The Juvenile Justice (Care and Protection of Children) Act, (JJ Act) 2000:**

This Act is one of most the essential Acts in India for the children in need of care and protection and also for children in conflict with the law. It requires that the state provides

¹⁴AIR 1984 SC 802.

free legal reinforcement to the juveniles, and proper care and protection is provided to those in need. It also calls for a child-friendly approach in adjudication and disposition of matters involving children.

▪ **The Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act,(PCPNDT Act) 2000:**

The main objective of the Act is to regulate and prevent the pre-natal sex determination at hospitals and other medical institutions in order to prevent female foeticides in India.

The National Commission for the Protection of Child Rights (NCPCR) is an Indian governmental commission, established by an Act of Parliament, the Commission for the Protection of Child Rights Act in December, 2005, thus it is a statutory body. The commission works under the aegis of the Ministry of Women and Child development, Government of India. It began operation in March, 2007.

The Commission considers that its Mandate is "to ensure that all Laws, Policies, Programs, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child." As defined by the commission, a "child "includes minors i.e. those up to the age of 18 years.

▪ **CONCLUSION:**

With the unchecked span of child rights violations in India, it is vivid that this is an issue which needs to be addressed at many levels, via a comprehensive program of the state as well as its people. Children, owing to their developing mind are vulnerable to the environment they are in.

It is of utmost importance that such environment is made suitable for their growth and development, regardless of whether such child is in conflict with law or not,it must be granted reasonable care and protection of the law. No nation can progress if children of

such nation suffer; therefore India with the help of various international, national and state mechanisms tries to secure the rights of the children as has been discussed above.

The role of both NGOs and government bodies is also imperative. A policy reform can 'give teeth' to police action on those who participate in the heinous crimes against children, only if corruption doesn't enable cover-ups, and hence erasure of these experiences. Grass root activism by NGOs is, therefore, vital to be the guiding light to expose this crime, educate both children and adults, and liberate children from a life of distress. All children deserve an opportunity at a prosperous childhood and together we can help them get one.