

Children Disadvantaged Sector in Context of Social & Legal Justice

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A poem by Clara Scott depicts the very essence of childhood and the need to preserve their innocence:

“When a child is excited by the first snow,
Let us too, be moved by the moment,
Let the spirit of the child touch each of us
So that we might appreciate the magic again and again and again!
Even as we nurture them or abandon them, they just unconditionally love us.”

Childhood is the most tranquil phase of a person’s life. Children are like the soft raw clay waiting to be moulded into the shape we want, can either be sculpted into beautiful human beings or appalling beings, both of which would be reflected in our society. Thus it is the solemn role of the society to calibrate the child to mirrored as a vital healthy facet and component of our communities.

Etymologically the term ‘**Child**’ originates from the Latin term ‘*infans*’ or the one who does not speak. Infinite writings are testimony to the innocence and purity of a child’s mind and how children as we all agree as the most vulnerable of all the groups of human beings.

Each of us have at some point of time, been touched and exposed to the unquestioning and trusting facet of a child. Yet it is this very defenceless human that has been the target of countless and immeasurable, mindless and horrific exploitation, abuse and torture of every kind from the adult community. Man being a self-interested and brutish creature by nature has heaped several forms of misery on thousands of children through the centuries and has continued to employ children for his selfish pursuits.

Documented chronicles on the plight of children are available for us to research.

Yet ‘Rights of children’ were not at all separately given any thought or consideration till the 20th Century when for the first time through, sometimes known as the Geneva Declaration of the Rights of the Child, 1924, an international document promoting child rights, drafted by League of Nations recognized that humanity has to do its best for the child. Children’s rights continued to be ignored till the World War I, when finally the Declaration of Geneva was adopted in an extended manner firstly by the League of Nations and then the United Nations adopted it in 1959.

The text of the document, as published by the International Save the Children Union in Geneva on 23 February 1923, is as follows:

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 nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succored.
3. The child must be the 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.

This text was endorsed by the League of Nations General Assembly on 26th November 1924 as the World Child Welfare Charter, and was the first human rights document approved by an inter-governmental institution.¹ It was reaffirmed by the League in 1934. Heads of State and Government

pledged to incorporate its principles in domestic legislation. In France, it was ordered to be displayed in every school.

“The General Assembly of the UN,

“Proclaims this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles”

These are the words used by United Nations General Assembly while passing the Declaration of the Rights of the Child. This is the vision which ensures that every child must have all the rights to which he is entitled by birth.

The aftermath of World War I and World War II had left, thousands of children round the world orphaned and abandoned or simply separated from their families. Many were simply the victims of war with no mode of fending for themselves, and pitted against the hapless mercy of the society. The predicament of the terrible plight of these children caught the attention of the world community, and prompted the United Nations to set up what is commonly known as the UNICEF or United Nations International Fund in 1946, for the assistance to child victims of war, aggression and displacement.

Further the Year 1979 was declared as the “International Year of the Child,” during which it was proposed to chalk out a program and framework for social and economic development of such children worldwide.

It was finally in the year 1989 that the International Convention on the Rights of a Child was held at New York City, leading to the Declaration on the Rights of the Child in 1990. Recognizing and admitting the need to declare the rights of children, as many as 196 countries including India are parties to this convention.

Further two Optional Protocols to the Convention were also adopted in respect of :

- Children involved in armed conflict, (dealing with child soldiers, whether their recruitment was voluntary, age of recruitment, informed consent etc). International Humanitarian Law is applicable to children.
- On Sale of Children, child pornography, child trafficking and prostitution etc.

A third Optional Protocol relating to communication of complaints was adopted in the year 2014.

The World Summit for children was held at New York in 1990 leading to:

- World declaration on survival and protection and development of child.
- Plan of action.

Convention on Rights of a Child (1990) forms the basis of the human rights jurisprudence in respect of a child in India. The convention consisting of 57 Articles is child centric and seeks to protect children from abuse and exploitation.

- The Convention forbids capital punishment for children.
- Eliminate all corporal punishment and other cruel or degrading forms of punishment to children. (India has adopted this policy though prohibition on corporal punishment rejected by several parties including Australia, Canada and U.K.)
- Child marriage and slavery has not been directly addressed by this convention.

Salient features of the convention: Fundamental Principle “Best interests of a child”

Article 1 of the Convention defines a child precisely:

“A child is any human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

- Children’s rights are human rights. (Survival and development.)
- Children’s rights are fundamental rights guaranteed to all human beings (Right to life, non discrimination principle, right to dignity and protection of physical and mental integrity.)
- Children’s rights are civil and political (Right to identity, nationality.)

- Children's rights are economic, social and cultural. (Education, decent standard of living, highest attainable standard of health.)
- Children's rights include collective rights (Rights of refugee and disabled children.)
- Rights of moral and material security (For harmonious development of personality.)
- Opportunities for play and recreation.
- Social security rights.
- Rights of protection and relief against labour, cruelty, neglect, exploitation (Sexual exploitation and others, trafficking kidnapping and ill treatment.)
- Rights at par with adults include from Articles 12-17, Freedom of expression, thought, conscience and religion, Freedom of association and peaceful assembly, privacy, access to information.
- Articles 20-25 ensure the welfare of a child through foster placement, adoption, care and protection of abandoned and neglected children (incorporated in the JJ Act)
- Children seeking refugee status have right to humanitarian assistance.
- Protection from illicit use of narcotic and psychotropic substances and trafficking. (Conduits and carriers).

Legal status of Human Rights of children in India:

India ratified the Convention on Rights of a Child in December 1992¹ agreeing to all articles except with certain reservations on issues relating to child labour. A blanket ban on child labour was not adopted considering the economic conditions in India but child labour was prohibited in hazardous industries. It was in October 2006 that child labour was banned in hotels, restaurants and domestic servants.

The Child Labour Prohibition Act was passed in the year 1986 and amended in 2016 seeks to regulate child labour in India.

Constitutional Position:

- **Article 15(3).** Nothing in this article shall prevent the state from making any special provisions for women and children.
- **Article 39(e)** 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"
- **Article 39(f).** This directive principle of state policy states that children be given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity and protection against moral and material abandonment.
- **Article 45.** Now converted into the fundamental right under Article 21A- Free and compulsory education to all children between the age of 6 to 14.
- **Article 51A** Fundamental duties.—It shall be the duty of every citizen of India—
(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.
- **Article-243 G** Provides for institutionalization of child care by seeking to entrust programmes of women and child development to Panchayats. (item 25 of Schedule 11)

Legislations related to Children

The Juvenile Justice (Care & Protection of Children) Act 2015

The fallout and massive wave of public outrage in the infamous Nirbhaya case finally prompted the Parliament to consider changes in the Juvenile Justice Act of 2000.

The Juvenile Justice (Care & Protection of Children) Act, 2015 is based on the foundation of CRC, United Nations Standard Minimum Rules (the Beijing Rules and Hague Convention, 1993) has been re-enacted as a comprehensive legislation *inter alia* to provide rehabilitation and social reintegration

¹ https://www.ilo.org/ipec/Regionsandcountries/Asia/India/WCMS_203643/lang--en/index.htm

for children in conflict with law and measures for adoption of orphans, abandoned and surrendered children.

The Act does not only aim to thus adjudicate matters of children in conflict with law but adopts a child friendly approach and processes for rehabilitation of children.

1. Juvenile welfare boards constituted under the Act assess the offences committed by children below 18 years of age on the following principles:
 - (i) Presumption of innocence.
 - (ii) Dignity and worth.
 - (iii) Participation (Right to be heard).
 - (iv) Best interest.
 - (v) Non-stigmatizing semantics.
 - (vi) Non-waiver of rights.
 - (vii) Equality and non discrimination.
 - (viii) Privacy and confidentiality.
 - (ix) Repatriation and restoration.
 - (x) Fresh start.
 - (xi) Diversion.
 - (xii) Natural justice.

The orders that may be passed by the Board under Sec 18 (maximum period up to three years confinement in a remand or appropriate correction home.)

The amended Act of 2015 provides for preliminary assessment into heinous offences by the Board under Sec 15.

In case of a heinous offence alleged to be committed by a child above 16 but below 18 years of age, this assessment shall be based on reports of psychologist and other experts. The Board being satisfied as to the mental and physical capacity of a child to commit such offence shall follow the procedure for trial in summons case under the code of criminal procedure, 1973. For this purpose, Sec 19 further constitutes special children's courts for trial of the child as an adult. However, including an individual care plan for rehabilitation and follow up by a probation officer or the district Child Protection Unit. Sec 21 in accordance with the CRC states that no child shall be sentenced to death or life imprisonment without possibility of release.

Two chapters, Chapters V and VI, deal with child welfare committees and procedure in relation to children in need of care and protection, whereas Chapter VII deals with rehabilitation and social reintegration through the processes of adoption, foster care, special children's homes and facilities, open shelters, child care institutions, observation homes, sponsorship.

An entire chapter (Chapter VIII) deals with detail procedure for adoption taking several safeguards regarding eligibility of prospective adoptive parents and inter country adoption, taking every precaution to protect the child from being exploited under the garb of adoption. The various provisions are in conformity with the CARA (Central Adoption Resource Agency) guidelines 2011.

The Act constitutes several offences against children and Chapter IX provides for penalties for various offences against children including:

- Prohibition on disclosure of identity of children.(Sec 74)
- Punishment for cruelty (Sec 75) and employing child for begging (Sec 76), exploitation of child employee (Sec 79), sale and procurement of children for any purpose. (Sec 81)
- Corporal punishment. (Sec 82).
- Use of child by militant groups or adults (Sec 83) e.g. terrorism
- Kidnapping and abduction. (Sec 84)
- Offences on disabled children. (Sec 85)

All reports in respect of a child will be treated as confidential to avoid stigmatization and criminal record of the child.

The Transfer Policy of a young offender to be tried under the provisions of the Cr.P.C., has now been incorporated into the newly amended Act by way of creation of the Children's Court under Sec. 19 of the said Act.

Criminal Law Provisions in Respect of Children:

Several provisions in the Indian Penal Code of 1860, seek to protect the child, from criminal prosecution, and other provisions constitute offences against the child, hence protecting a child from offences being committed against them.

1. Chapter IV- General exceptions
 - Sec 82 & 83 (absolute and qualified immunity, based on immature understanding.)
doli incapax- William Blackstone militia supplet aetatean or malice supplies the age.
 - Sec 90- Consent of a child. Not valid age
2. Sec 305- Abetment of suicide of a child- punishable with death penalty.
3. Sec 315- Causing of death of child at the time of birth.
4. Sec 316- Causing death of quick unborn child.
5. Sec 317- Exposure and abandonment of child (Under 12 years) by parent or one taking care of the child.
6. Sec 318- Concealment of birth by secret disposal of dead body.
7. Sec 361- Kidnapping from lawful guardianship (Boy below 16 years, girl below 18 years).
8. Sec 364 A- Kidnapping for ransom- Punishable with death penalty.
9. Sec 369- Kidnapping child below 10 years with intent to steal from its person.
10. Sec. 376AB- Punishment for rape on woman under twelve years of age.
11. Sec. 376DA- Punishment for gang rape on woman under sixteen years of age.
12. Sec. 376 DB- Punishment for gang rape on woman under twelve years of age. (Capital punishment can also be imposed)

Reflection of India's Progressive attitude toward Child Welfare

There has been a radical shift in the welfare and protection approach to a guaranteed rights based approach, affixing social responsibility on the State for safeguarding the children in India. India has passed several legislations reflecting policies for child welfare, and safeguarding the "best interests of the child" in the light of the various International conventions that India has endorsed. Some of the legislations are listed below:

Child Marriage Restraint Act, 1929.

Child Labour (Prohibition & Regulation) Act, 1986

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.

The Hindu Minority and Guardianship Act, 1956.

The Pre-Conception and Pre-Natal Diagnostics Techniques Act, 1994.

Right of Children to Free and Compulsory Education Act, 2009.

Young Persons Harmful Publications Act, 1956.

The Immoral Trafficking (Prevention) Act, 1956. (ITPA)

Probation of Offenders Act, 1958.

Protection of Children from Sexual Offences Act, 2012. (POCSO)

In addition to the laws enacted since independence itself several policies for child welfare have been adopted by the government:

- (i) National Policy for Children 1974 and 2013
- (ii) National Policy on Education 1986
- (iii) National Policy on Child Labour 1987
- (iv) National Nutrition Policy 1993
- (v) National Health Policy 2002
- (vi) National Charter for Children 2003
- (vii) National Plan of Action 2005

Conclusion

The recent Russian - Ukrainian conflict has once again exposed children to the horrors of war and being not just orphaned or displaced but deprived of every natural and human right protection, and deprived of the childhood crushed in the war between their nations. They become the casualties of any war that crushes their childhood. Children are the most vulnerable subjects of wars and armed conflicts. There is a direct impact on the education that gets disrupted, and psychological impacts due to displacement from their original habitat.

The surfeit of legislations and policies for child welfare would indicate that the children in India are well armed from social inequities and injustice being heaped on them. However the stark reality is very grim and very few children are getting recourse to justice through the forums provided for access to justice. The escalating pace of child abuse including, trafficking, sexual abuse and exploitation indicates their disadvantaged position.. The implementation of these laws for child rights protection is far from the goals for which they were enacted and large number of unrepresented children never see the light of justice , being unaware of the remedies that are provided for them under these statutes and continue to suffer in silence being the vulnerable disadvantaged groups.

However in the wake of several legislations and policies for children in the legal regime, we can hope for better protection of the rights and interests of children in India, and safeguarding them against exploitation of every kind, Much would however depend on the governmental will for effective implementation of the plethora of laws and policies for children. These laws would be catalytic to preserve, nurture and develop this great human resource and asset of our future, and enable it to become responsible citizenry for the bright future of the nation.

The renowned Chilean poet and Nobel prize awardee, Gabriela Mistral has rightly said :

“Many things can wait. Children cannot. Today their bones are being formed, their blood is being made, their senses are being developed. To them we cannot say "tomorrow." Their name is today.”

I conclude by quoting the great African leader and upholder of human rights, Nelson Mandela, who has rightly pointed out :

“There can be no keener revelation of a society's soul than the way in which it treats its children.”

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