

THE ABRASIVE SABOTAGE OF CHILD RIGHTS

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Introduction

Human rights are those rights which are essential to live as human beings – basic standards without which people cannot survive and develop in dignity. They are inherent to the human person, inalienable and universal.¹ Within this broad category of Human Rights, there are Child Rights. Its very apt “*A person's a person, no matter how small*”² The Child by birth must get the Right of his Identity, Safety, Education, Health , Food, Equality etc. Regardless of race, colour, gender, language, religion, opinions, origins, wealth, birth status. At International level, the most ratified convention related to Human Rights is United Nations Convention on the Rights of the Child which has received the ratification of 192 countries. The articles of the Convention lay the foundational principles from which all rights must be achieved. India too ratified this convention and The Indian Constitution stresses on providing child with hygienic and safe environment, to help him meet the basic needs and to expand his opportunities to reach his full potential. The Constitution has provided safeguards to protect the child from neglect, exploitation and abuse.

Historical Evolution of Child Rights

There have been a number of international treaties and documents that outline the rights of a child. Prior to World War II the League of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924. The United Nations (UN) took its first step towards declaring the importance of child rights by establishing the United Nations International Children's Emergency Fund in 1946 (The name was shortened to United Nations Children's Fund in 1953, but kept the popular acronym UNICEF). Two years later the UN General Assembly adopted the Universal Declaration of Human Rights, making it the first UN document to recognize children's need for protection

¹ http://www.unicef.org/crc/index_framework.html

² “The parables of Dr. Sues”, written by Robert L. Short, First edition published by Westminster John Knox Press Louisville, Kentucky.

The first UN document specially focused on child rights was the Declaration on the Rights of the Child, but instead of being a legally binding document it was more like a moral guide of conduct for governments. It was not until 1989 that the global community adopted the United Nations Convention on the Rights of the Child, making it the first international legally binding document concerning child rights. Today the convention has been ratified by 192 countries becoming the most ratified of all international Human Rights treaties. India signed and ratified the convention on 10th December 1992. The only two countries who have not ratified the treaty are the United States and Somalia. Somalia has been unable to ratify due to the lack of a stable government and the US has signed the treaty showing their intention to ratify.³

The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. There are four broad classifications of these rights. These four categories cover all civil, political, social, economic and cultural rights of every child:

- **Right to Survival:** A child's right to survival begins before a child is born. According to Government of India, a child life begins after twenty weeks of conception. Hence the right to survival is inclusive of the child rights to be born, right to minimum standards of food, shelter and clothing, and the right to live with dignity
- **Right to Protection:** A child has the right to be protected from neglect, exploitation and abuse at home, and elsewhere.
- **Right to Participation:** A child has a right to participate in any decision making that involves him/her directly or indirectly. There are varying degrees of participation as per the age and maturity of the child
- **Right to Development:** Children have the right to all forms of development: Emotional, Mental and Physical. Emotional development is fulfilled by proper care and love of a support system, mental development through education and learning and physical development through recreation, play and nutrition.⁴

³ United Nations Convention on the Rights of the Child

⁴ <http://www.childlineindia.org.in/child-protection-child-rights-india.htm>

Child Rights under Constitution of India

- Article 14- The State shall not deny to any person equality before the law or the equal protection of laws with in the territory of India
- Article 15- The State shall not discriminate against any citizen. Nothing in this Article shall prevent the State from making any special provisions for women and children. It is the mother of all Child Rights.
- Article 21- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A- The state shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- Article 23- Traffic in human beings and beggary and other forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
- Article 24- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Constitution (86th Amendment) Act was notified on 13th December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years.

Child Labour

Child labour issues have been raised in India from the inception of Industrialization. The 55th Round of the National Sample Survey, carried out by the National Sample Survey Organization (NSSO) in 1999, indicates that there are about 10.4 million working children.⁵ The Judiciary has been dealing with this sensitive issue which is of the socio economic importance. In the case of *Salal Hydro Project vs. State of Jammu and Kashmir*,⁶ a large number of migrant workmen

⁵ Ministry of Labour and Employment, Working Group Report on Strategy for the 10th Plan

⁶ Labourers Working on Salal Hydro Project v. State of Jammu & Kashmir, AIR 1984 SC 177

including children from different States of India were working on the Salal Hydro Electric Project in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The Apex court held that the employment of children below the age of 14 years of age in construction works violates the Article 24 of the Indian Constitution which prohibits the employment of children in factories.

According to one of the reports submitted to National Commission for Protection of Child Rights (NCPCR), in Surat children from Orissa belonging to the age of less than 15 years old were working as labours in Embroidery business. In this relation, there has been one legislation to deal with the problem of child labour. It is The Child Labour (Prohibition and Regulation)act 1986. The act was operated within a regulatory framework but this law has several legal and procedural loopholes. For instance, the law is very limited in scope. It covers only the organized sector, where around only 7 to 8 % children work. It does not speak about the children working in the unorganized sector and also neglects the children working at home or family in cities. India is sadly the home to the largest number of child labourers in the world. The census found an increase in the number of child labourers from 11.28 million in 1991 to 12.59 million in 2001⁷.

The Planning Commission which was set up in March 1950 by a Resolution of the Government of India took the initiative to look into various economic issues of the country as well as to check the social aspects of the nation including the rights and the liberty of the children. The Tenth Five-Year Plan(2002-2007) laid down one of its main objective which was to send all children in India to school by 2003; all children to complete 5 years of schooling by 2007. The Eleventh Five-Year Plan (2007-2012) was one which laid down the introspection and check on the children welfare. One of the main objectives of the Eleventh Five-Year Plan was to ensure that all children enjoy a safe childhood, without any compulsory work. Despite all these laws, there are many instances of child labor, some of the cases as provided in '*Rajasthan bal adhikar samrakshan sagha abhiyan*' are mentioned below which were compiled by various organizations whose names are mentioned with the cases -

⁷ Office of the Registrar General of India, Census of India 1991 and Census of India 2001, New Delhi

In Kota, a girl was forced to be sexually exploited Vinita (name changed) is a small girl of age 14 from Suket, Jhalawar⁸. Her parents are not alive and she lives with her aunt. Her aunt Suman Kumawat wanted her to establish sexual relationship with the boys. Whenever the girl used to protest, she was beaten up and was forced to establish the relationship. Finally, the girl told that her aunt had forced her to establish relationship with three boys fifteen days earlier. Presently, by the order of CWC kota, she is living in 'rajkiya balika graha Nanta'.

Another case of Kota about Domestic child Laborer on whom sexual exploitation attempt was made⁹. Archana (Name Changed) is a 14 year old girl who lives in Rangbari, Kota. She doesn't know from where she was brought up. She was told that was brought in from an orphanage and since then she is living at Seth Ganshyam's residence. Her childhood went in completing domestic chores of the residence. She never went out of the house. Once the owner of the house along with his wife went to Bombay leaving behind his 24 year old son Rahul at home. He forced Archana to establish relationship with him. But she managed to escape from the house and on fearing, being forced to return back to that house, she decided to suicide. Presently, by the order of CWC kota, she is living in 'rajkiya balika graha Nanta'.

In another case of Child Labor in Agriculture¹⁰, In Tonk, Jeetram is a 10 year old kid who lives in Rega Mohalla, Kathmana Village, Tonk District. On 30th October 2011 his father died in an accident. On hearing this, his Mother became ill and breathed last on 22 March 2012. He also has a younger brother Yadram (6 Years). After the death of his parents, he along with his brother started living at his Uncle's house. His Uncle made him work in farm along with his brother. His uncle and aunt used to beat him up and didn't feed them. Both the brothers were forced to beg and eat. On orders from bal kalyan samiti, Tonk both the kids were rescued. In Jaipur¹¹, Child lost his hand working in Oil Mil . Kishan who is a young 11 year old kid from Bassi Village, district Jaipur. His father died long ago and his mother works on daily wages. In his village there is one Merchant's Oil Mill, where the merchant lures him to work at the mill for Rs 10 per hour.

⁸ Organization name : Child Line Kota

⁹ Organization name : Child Line Kota

¹⁰ Organization name : shiva shiksha samiti ranoli tonk

¹¹ Organization name :ekal nari shakti sangathan, Jaipur

During this time, while the mill owner had employed Kishan to work, his right hand amputated while working on the machine. Presently the kid is living with his mother at his village.

In yet another glaring case of child labor from Jaipur where Child was working in Bangle Manufacturing Industry. Vinod is a 11 year old kid. He is from achal Nagar, Gaya District , Bihar. He worked for three hard years in Jaipur in bangle manufacturing industry. He travelled to Jaipur by Train where he met a person who made him to work in this industry. He used to work from 7.00 in the Moring till 11.00pm in the night. He was given meager food to eat. Moreover, whenever he felt sleepy, He was dipped in water and his body was scald with *bidi*. The child still has those burn marks. Neither the child was not allowed to talk to his parents nor was he paid anything. Once, when Vinod decided to go back to his home, then he was beaten with a Iron Rod. He was bleeding and he somehow managed to escape to Railway Station. Presently the Kid is living with his family in Bihar.¹²

Right to Education

For any country's progress and development, education has a very pivotal role. Since Independence, many attempts have been made to revise and develop the education system. Indian Constitution also contains provisions recognizing the importance of education. In fact, the constitution since its inception contained article 45 directing the state to provide free and compulsory education within 10 years to all the children below 14 years. But no government, till date, even after 60 years of Independence has been successful in achieving this goal. The rhetoric of lack of resources for mass education has continued to dominate policy formulation since the Independence. A major breakthrough was made in 2002 in regards to the enforceability of the child rights in India. By the 86th Amendment, 2002 a new article was inserted in the paradigm of the Indian Constitution. This was article 21- A . The Supreme Court gave its interpretation on Article 21 in the case of *Bandhua Mukti Morcha v Union of India*¹³ and held that educational facility is an integral part of the right to life. This article guarantees the Right to education to all

¹² Organization name :Tabar Sanstha, Jaipur

¹³ AIR 1984 SC 802.

the children who come under the age bar of 6 to 14 years old. All the children within this age group shall be provided with free and compulsory education. Translating this into action, 'The Right of children to free and compulsory education' was drafted in 2005. It was later revised and became an Act in August 2009. The Act came into force from 1st April, 2010. Though this Act i.e. Right of Children to Free Compulsory Education is quiet sufficient yet the commodity of education to the children between 6 to 14 years of age is not delivered.

In the case of *Unni Krishnan J.P. v State of Andhra Pradesh*¹⁴, Justice Mohan observed "in educational institutions which are seed-beds of culture, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up statesmen and soldiers, patriots and philosophers, who will determine the progress of the land." In this case the Supreme Court stated that Article 45 in Part IV of the Constitution must be read in harmonious construction with Article 21(Right to Life) in Part III since right to life is meaningless if it is without access to knowledge. The Apex court held that the right to basic education is implied by the basic fundamental right to life i.e. Article 21 when read in relative with directive principle on education i.e. Article 41. The court held that the right must be understood in the context of directive principle of state policy, including Article 45 which provides that the state is to endeavor to provide, within a period of 10 years from the date of commencement of the constitution, for free and compulsory education for all children under the age of 14.

An NGO working on the upliftment of children has pointed out that 50% of Indian children aged 6-18 do not go to school and apart from education issue, There are approximately 2 million child commercial sex workers between the age of 5 and 15 years and about 3.3 million between 15 and 18 years. They form 40% of the total population of commercial sex workers in India. 5 lakh children are forced into this trade every year. If there are constitutional Acts for child welfare and child education and still such reports pop up then there is a defect in the implementation mechanism of our system.¹⁵

¹⁴ (1993) 1 SCC 645

¹⁵ Smile Foundation

In some places where the Right to Education Act has been implemented, there other issues have been raised. These issues range from sanitation of children to the inefficient and inconvenient infrastructures of the primary schools for children. As per Annual Economic Survey 2011-12, 28% of the schools have no playground, 16.6% of the schools have no provision for drinking water and around 56% of the schools still have no separate toilets for girls. Apart from this, we all read, hear and watch in news that children in schools are regularly beaten up by their teachers and face physical and mental torture.¹⁶

There have been a lot of cases in the past decade that show the atrocities on children by their teachers in schools. The Rajasthan Commission for Protection of Child Rights (RCPCR) has received many cases related to child harassment and torture by teachers one of these cases was of Piya Choudhary. The girl was 7 years old and was studying in Tagore School situated in Madwa road, Jhunjhunu Rajasthan. When the girl was unable to complete the assigned work, her teacher tortured her so badly that she lost her eye sight. Subsequently, on 16th November 2012 the girl died.¹⁷

Working of the Integrated Child Development Services with focus on Aanganwadi's in Jaipur, Rajasthan

India's response to the challenge of providing protection and pre-school education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other is Integrated Child Development Services (ICDS). It represents one of the world's largest and most unique programs sponsored by Govt. of India for early childhood development; it is the foremost symbol of India's commitment to her children. Aanganwadi is a government sponsored child-care and mother-care center in India. It caters to children in the 0-6 age group. The word means "courtyard shelter" in Hindi. They were started by the Indian government in 1975 as part of the Integrated Child Development Services program to combat child hunger and malnutrition. A spot survey of the 348 Aanganwadi Centres(AWC) was

¹⁶ Annual Status Report of Education 2011

¹⁷ Rajasthan Commission for Protection of Child Rights (RCPCR)

conducted from 22nd may to 30th June in the city of Jaipur by People's Union for Civil Liberties Interns. ¹⁸ Information regarding the workings and condition of Aanganwadi was gathered like age, education, location of residence, type of building, space, availability of facilities like electricity, toilets, drinking water, weighing scales, cooking materials, THR and medical facilities.

The major issues and concerns on the basis of the finding are listed below –

- Absenteeism: Almost 14% cases of Anganwadi Worker (AWW) were not present. Nine percent AWC were closed. Thus 23 % AWW were absent.
- Access to AWCs: As per the norms of the Supreme Court access to AWCs has to be universal. But accessibility continues to be a major concern so far. The access to 3 to 6 years old was less than 10 %. For others it varied from 21 to 47 percent.
- Equipment and Facilities: The availability and working of equipment and facilities is not up to mark. In first place the availability of equipment/facility is quite low and secondly even when facility is available, many are not functional. For instance, weighing scales are not functional in many AWCs & also the workers don't know how to use them. Drinking water & toilet facilities are lacking in large number. Toilet facility is available only in 45% AWCs & drinking water facilities were found available in two out of three AWCs. In 35 % of AWCs play equipments were not in use.
- Supplementary Nutrition: In seven percent cases take home ration was not of good quality which could be expected from a normal human to eat. In several cases, it was not supplied on time. The quantity of cooked hot meal was reported to be insufficient in 18 % cases.

¹⁸ Author was also the part of this spot survey

Conclusion

Wordsworth has rightly said that child is the father of man is apt and requires reflection because it is childhood that seeds personality of morals, behavior, understanding and responsibility are sown. These traits take a definite shape and form by the time of adulthood. A society of responsible citizens, in future is no utopian dream but it requires a conscious effort from the responsible strata today.

The unjust travails in childhood could wake the child callous, rebellious, anti democratic and anti social and consequently 'child-adult' is permanently shackled in dystopian world of hindrance to progress, starvation, un development and denial of opportunity. The 'child adult' becomes a burden on society. This remorseful situation of child is a question mark on the 'civility' of society. How different is it from the animal kingdom where might is right and meek is exploited. It is not debatable to claim that the most fragile and meek section of our society i.e. children are being exploited by rapacious sections of society. We need a multi pronged strategy to unweave this sinister evil of child exploitation.

- Implementation: We need proper implementation of existing laws and strengthening of both civil and administrative bodies.
- Involvement: The local society including the residents, public welfare bodies, NGOs and social activists along with special dedicated organizations must be involved in suggestions and implementations of child laws. Child laws must be encouraged and be given necessary resources to carry out their task. They must also be pro active to the needs of 'marginalized' children.
- Education: Education and awareness through schools, camps and various channels of information dissemination must be facilitated and provided to all stake holders including the adult citizens about the rights of child. State must adopt policy of 'zero tolerance' towards infringement of child rights and impose strict sanction upon the transgressors.