

Role of Indian Judiciary in Safeguarding the Rights of Children

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ABSTRACT

Humanity's greatest blessing is its children. A nation's children are its most precious possession because they represent the future. Society will be pleased with the youngsters if they are better prepared to handle borderline human situations. When people disregard children, it impacts the entire society. Since India's independence, it has made great strides in protecting children's rights. This essay will discuss the many child rights issues in India, the several groups working to resolve these issues, and some possible remedies to these problems. Ensuring the preservation of basic rights for both citizens and non-citizens is an essential responsibility of the Indian Judiciary. Judicial activism, which aims to safeguard children's rights, rose to prominence in the contemporary era.

Keywords: *Child Rights, Judicial Protection, Education, Constitution.*

I. Introduction

In India and around the world, children have a right to a number of specific protections, but these rights can only be realized via the effective application of these rules. Child abuse, trafficking, hunger, insufficient healthcare, and other forms of child rights violation are all too common. Development plans, strategies, and other programs were established to combat the infringement of child rights as a result of the United Nations Convention on Child Rights.

Enforcement of all laws, policies, rules, and regulations that are announced as notifications requires a heightened level of attention from a population-rich nation like India, which also necessitates periodic evaluation. No matter how many national and international standards are in place, children will always be a particularly susceptible demographic that need extra safeguards. In order to ensure that all citizens have equal access to education, the nation must overcome obstacles by interpreting each provision of legislation in light of its specific circumstances.

We can strive for holistic development through affirmative action, which is required by the Indian constitution. Due to the country's diversity, progress in India has always been shaky; certain regions have improved significantly while others continue to lag far behind. A more all-encompassing framework must address these concerns, since the number of hungry children continues to rise. According to the 2011 census, progress in protecting children's rights in India has been slow, but with the help of well-enforced legislation, this might change.

Children have a right to their most fundamental necessities. "Rights" allude to children's most fundamental necessities. The rights of children are a subset of human rights that pertain specifically to people under the age of eighteen. The United Nations Convention on the Rights of the Child (UNCRC, 1989) states that all children under the age of 18 should have certain basic rights guaranteed to them, regardless of their race, gender, nationality, religion, socioeconomic status, place of birth, or physical or mental abilities. Right to Survival, Right to Protection, Right to Participation, and Right to Development are the specialized rights that they have discovered.

With India's economy growing at such a rapid pace, protecting children's rights has become a top priority. Despite India's economic success, the nation's essential services remain inaccessible, and millions of children suffer from abuse, neglect, and exploitation. Gender inequality, poverty, starvation, inadequate healthcare, inadequate education, and inadequate protection from abuse and exploitation are just some of the challenges that children in India face. Indian authorities have responded to these issues in a number of ways, including the Juvenile Justice Act and the Integrated Child Protection Scheme. There is still a long way to go before all children in India have the safeguards and rights they are due. In this essay, we will take a look at some of the major child rights issues that India is now facing.

II. History of Child Rights in India

Sacrifice, kindness, generosity, nonviolence, and equality have been cornerstones of Indian culture from the beginning. Since the Vedic period, human rights have been a central tenet of Indian philosophy. All humans should be treated with dignity and respect, without bias or discrimination, according to the teachings of the Vedas, the Upanishads, and the Arthashastras. In the modern era, the idea of children's rights has only grown in prominence. Despite the child's lowly position in the social hierarchy, ancient Indian law—and the laws of Manu in particular—granted them protective status. Children were only eligible for welfare benefits, and a child's father was legally recognized as the child's only guardian. Historical records make it quite evident that there is a persistent bias when it comes to caring for children in India. Bias against children in India stemmed from a variety of sources, such as the child's age, gender, caste, and familial ties. Kings such as Ashoka (268–31 B.C.) and Chandragupta Vikramaditya (c. A.D. 375–415) sought to preach moral requirements that children should obey their parents and show respect to those in authority. Obedience and allegiance to elders was bolstered by this as well, as the notions that it was a morally commendable and socially acceptable behavior.

India saw heightened suffering and decline during the Middle Ages, roughly from the eleventh to the seventeenth century, as a result of the invasion of Arabs, Turks, Afghans, and the Mughals. The foreign invasions of India utterly destroyed its sociocultural worldview and looted its wealth. Because of the general economic downturn, children experienced difficult conditions. Foreign culture was forced upon individuals, and it had a devastating effect on their lives. It was especially difficult for families in rural India to provide their children with healthy food and other necessities. The once-dominant emphasis on basic education has been steadily dwindling away. Only members of the Hindu upper castes, such as the Brahmins and Rajputs, were granted access to primary

education. The Maulvis ensured that only Muslims from wealthy families could receive a rudimentary education. Education for girls was scarce, and they were socially relegated to a lower position than boys. Neither the rulers nor the people did anything to stop it.

Certainly, under British control, children from lower-income or lower-class Indian society had it rough. During this time, the nation was thrown into economic, social, and political turmoil, which caused immense hardship and uncertainty. Children were particularly affected by this. The worst kind of child abuse occurred as British empire expanded, and children were subjected to ever-increasing kinds of oppression. Following this, a century-long fight for independence from the British dynasty ensued, with the dual goals of freeing an Indian culture that had been stifled by centuries of slavery and reviving an Indian people that had lost touch with its heritage and identity.

Mahatma Gandhi, Lala Lajpat Rai, and Lal Bahadur Shastri were just a few of the great Indian leaders whose endeavors and speeches roused the people to question and challenge long-held cultural and social norms regarding issues such as child marriage, inadequate child care, and widespread illiteracy. Consequently, the movement for Indian independence included what is now commonly known as "social action" to strengthen communities and help individuals overcome societal norms that held them back. A child's healthy development thus became recognized as a crucial component in the revival of the country. As the leaders of India drafted their constitution, social concerns for children rose to the forefront. At the level of group social action, this was also the start of an independent spirit. The Indian government passed a number of statutes (such as the Apprentices Act and the Reformatory Schools Act) to ensure that the country's youth were adequately prepared for the future. In order to provide a safe and nurturing environment for children to develop, these regulations were the first successful actions that were put into place. The First World War presented a number of difficulties for the United Kingdom and other European and North American nations. During that period, these nations were primarily focused on averting the social disaster that may have resulted from the violence and chaos caused by the war. The League of Nations formed a Committee for Child Welfare to alleviate the increasing distress over child protection. According to Lundy (1997), on page 21, As its charter, the Save the Children International Union approved a five-point proclamation in 1923. It laid forth the ground rules for how a community should run in order to ensure the safety and well-being of its youth. After much lobbying by the Union, the League of Nations adopted a similar statement the following year.

"The Declaration of Geneva" was the name given to the 1924 Declaration of the Rights of the Child since it was adopted during a League of Nations convention that took place in Geneva. In recognition of the fact that "mankind owes to the child the best that it has to give," the five basic principles outlined in the Declaration laid the groundwork for the protection of the weak, exposed, and vulnerable as well as the promotion of the growth and development of children. The document's five chapters outlined and addressed issues related to children's well-being and recognized the adult responsibility to ensure that children have adequate assistance for their right to development, growth, protection, and support. For the first time, the Geneva Declaration recognized and stated the reality of children's rights and adults' responsibilities for children. It is a magnificent declaration. It was also made clear in the Geneva Declaration that the care, protection, and wellbeing of all children was a legitimate obligation of the entire world, not only of families, communities, or even nations.

III. Constitutional and Legal Rights of The Child

The need of safeguarding children from maltreatment and neglect is being more acknowledged globally, and there is a rising tide of activism in favor of children's rights. It is also becoming more apparent that children are the country's most valuable and promising human resource. In India, the right to free and compulsory education is guaranteed in Article 21 (A) of the Indian Constitution for all children from six to fourteen years old, and Article 45 mandates that the state provide early childhood care and education to all children below six years old. The constitutional amendment that added Article 51(k) to Part IV-A imposes the fundamental obligation on parents and guardians to ensure that their children, from the ages of six to fourteen, have access to educational opportunities.

Of the total population, 157.86 million were children under the age of 6, making up 15.24% of the total. All things considered, children make up 42% of the country's population. For a nation to thrive, it is crucial to prioritize a child's holistic development, both for their own benefit and for the benefit of the nation as a whole. Depending on their elders, children are innocent, defenseless, and reliant. It would be a crime against humanity to leave them behind and deny them access to a decent life foundation. How a nation's youngsters mature and grow up determines that nation's future prosperity. In light of their vulnerable status, children require specific statutory safeguards to prevent exploitation and abuse, shield them from certain obligations, and foster their personal development.

The Indian government is obligated to refrain from discrimination based on any of the grounds specified in Articles 14 and 15 of the country's constitution. The 1989 United Nations Convention on the Rights of the Child, Article 2, outlined certain requirements for the protection and well-being of all children in a country. During its 35th session, the committee on the rights of the child reviewed reports presented by India, which is a state party to the Child Rights Convention under Article 44. As part of its commitment to the Convention (CRC)5, the Indian government has introduced the Right of Education Bill to ensure that all children between the ages of 6 and 14 have access to free and compulsory education. Nonetheless, private schools are not happy about the provision that requires a 25% reservation for children from economically disadvantaged backgrounds in the 6–14 age bracket.

Efforts to elevate the child's status have been done at the domestic level in India. Some parts of the Indian Constitution also reflect the consciousness relating to the welfare and rights of children. Under Article 15 (3) of the Indian Constitution, the government has the authority to provide specific measures for children. Additionally, it guarantees all children, from the ages of six to fourteen, the right to an education that is both free and mandatory. Human trafficking, beggary, and other types of forced labor are addressed under Article 23 of the Indian Constitution. They are illegal, and it is now a crime in India to violate them.

No factory, mine, or other dangerous occupation may hire a minor under the age of fourteen. The State shall direct its policy towards assuring that children are not abused at a young age and that people are not forced to engage in activities that are not suitable for their age or strength due to economic need, as stated in Article 39(e). Both the causes and the best interests of children are enshrined in Part III and IV of the Indian Constitution under articles 15(3), 24, 39(e), (f), 45, and 51-A(k). Full physical, psychological, and social development of children is a goal of the National Policy for Children, 1974, which aims to provide children with sufficient services before, during, and after birth.

IV. Judicial Response to Child Related Laws

Many exploited youngsters in India have had their lives improved by orders issued by the country's highest court. The case is *Bandhua Mukti Morcha v. Union of India*. According to the Supreme Court, Articles 41 and 42 of the Directive Principles provide everyone the fundamental right to live in dignity. The court also determined that even while the directive portion cannot be enforced, the state is nonetheless obligated to provide safeguards against abuse, opportunity, and facilities for the children. For children to be able to live with respect and dignity, certain basic conditions must be met.

Children are more than just property or toys, as the Supreme Court noted in the case of *Rosy Jacob v. Jacob A. Chakramappal*. Every kid in the nation has a right to a fair shake when it comes to the republic's coffers, so they can grow up happy and healthy. Children are vulnerable and in need of care, sustenance, and a nurturing environment in order to develop into contributing members of society who can aid in the advancement of their country. As a result, there should be a larger portion of the budget allocated to their development and welfare. Right now, more than ever, people need to prioritize their health, education, and the environment. Public funds are better used in the long term by investing in children's education rather than cutting them.

According to the 2011 census, about 42 million children in the 6–14 age bracket do not have access to basic education. Pervasive cultural biases and a general disregard for girls have also been obstacles to girls' education. Only one school out of six in India's seven millions rural primary and upper elementary schools has a toilet, which discourages girls from going to school, according to data provided by UNICEF.

When it comes to kids' education, the government is completely insensitive. Unfortunately, the Education Bill has never been passed, despite being required by Article 21-A of the Constitution. This provision states that the states must ensure that all children have access to free and compulsory education. The government should prioritize the right to education and other ways to help children develop their physical and mental talents when they are young if it is truly committed to ending child labor.

It is tragic that, in the years after independence, the three ills of crime, corruption, and lack of leadership have been festering and have a negative impact on the country's progress and development. People of competence, character, compassion, and care in all areas of life, but notably in government at all levels, must act immediately to stop them before they take root. Those who are born with these virtues can nurture the next generation to be truthful, generous, righteous, and loving. So that the country's future is secure in the hands of its children, it is more practical and efficient to inculcate these attributes in children from an early age.

After gaining independence, the framers of the Constitution anticipated that Article 45's aim of providing primary education to all citizens within ten years, but this ambition remained unfulfilled for half a century. But in *Unni Krishnan vs. State of A.P.*, the Supreme Court raised Article 45's directive principles to the level of Article 21, the right to a dignified existence. The court notes that the absence of a strong push for mandatory education is the reason why this situation persists.

V. Conclusion

A comprehensive strategy is necessary to safeguard and advance children's rights in India. The judiciary has done a lot of good, but more needs to be done to enforce the laws that are already in place, raise public awareness, and deal with economic inequality. To guarantee that even the most disadvantaged children reap the benefits of government assistance programs, government initiatives should be more inclusive. If India is serious about providing a nurturing environment for all of its children, it must forge strong alliances with civil society, international organizations, and the government.

References

1. Amit Singh, "Child Rights Advocacy with a Focus on India," vol. 4, no. 7, SSRN Electronic Journal, 2009, pp. 22-26.
2. Asha Bajpai, "Child Rights in India: Law, Policy, and Practice," vol. 5, no. 6, International Journal of Law, 2006, pp. 14-19.
3. Dr. Singh and Syed Akhtar, "Protection of Children's Human Rights in India," vol. 23, no. 12, Journal of Education: Rabindra Bharati University, 2021, pp. 22-29.
4. Laura Rosenbury, "Children and Law," vol. 6, no. 5, International Encyclopedia of the Social & Behavioral Sciences, 2015, pp. 14-22.
5. Madhu Gupta and Parvesh Lata, "Protection of Child Rights in India: Role of Teachers and Parents," vol. 2, no. 3, Department of Education, Maharshi Dayanand University, Rohtak, 2013, pp. 1-10.
6. Mukunda Vilas, Shilpy Gupta, and Dadarao Kadam, "The Laws Relating to Rights of Child - A Critical Review," vol. 11, no. 5, World Journal of Pharmaceutical Research, 2022, pp. 968-975.
7. P.R. Britto and N. Ulkuuer, "Child Development in Developing Countries: Child Rights and Policy Implications," vol. 83, no. 1, Child Development, 2012, pp. 92-103.
8. Rajdeep Ghosh, "The Role of the Indian Judiciary to Combat Sexual Abuse Against Children," vol. 7, no. 1, International Journal of Psychosocial Rehabilitation, 2019, pp. 1787-1800.
9. Sandeep Bhosale, "Role of Indian Judiciary in Protection of Rights of the Children," vol. 7, no. 2, PSN: Rule of Law, 2011, pp. 1-10.
10. Sathiyaraj and K. Jayaraman, "A Study on Child Rights Awareness among the Primary School Teachers in Tiruchirappalli District of Tamilnadu," vol. 3, no. 6, International Journal of Scientific and Research Publications, 2013, pp. 1-10.
11. Sathiyaraj and K. Jayaraman, "A Study on Child Rights Awareness among the Primary School Teachers in Tiruchirappalli District of Tamilnadu," vol. 3, no. 6, International Journal of Scientific and Research Publications, 2013, pp. 7-23.
12. Y. Vishnupriya, "Judicial Activism for Protection of Children in India," vol. 37, no. 1, Socio-Legal Journal, Jan. 2011, pp. 150-160.