

## EXPLORING INDIA'S CONSTITUTIONAL COMMITMENT TOWARDS CHILDREN: THEORY AND PRACTICE

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### ABSTRACT

The children are regarded as the asset of the country for its development and prosperity as they are the future citizens of nation. But in reality, they are found in most vulnerable position in maximum countries so they need to be protected. Across the world increasing attention has been paid in recent years to the notions of children rights. This paper using case study method tries to highlights the commitments of Indian Constitution relating to the protection and development of the children and to addresses the present status of children in India in respect of her commitments towards them. The study finds out that we need to go long way to fulfil the commitment made by the constitution of India. A large number of children in India is still in vulnerable position. Many children are denied basic rights, opportunities and a secure childhood as committed by our constitution. We need to urgently address these issues.

**Keywords:** Child, Constitution, India, Protection, Rights.

### INTRODUCTION

Childhood is the most sensitive stage of life of every human being. The destiny of a nation depends on how its children are being matured to become the future citizens of the country. But, then, it is also true that since children are small, immature, inexperienced and dependent on adults for taking care of them, this makes them vulnerable and easy target for exploitation (Chopra, 2015, p. 2). The fact that children are vulnerable, they need to be cared for and protected from the harshness of the world outside and around (Bhakhry, 2006, p. 9). Millions of children worldwide experience the worst kinds of rights violations such as violence, child labour, trafficking, sexual exploitation, female genital mutilation/cutting, child marriage etc. UNICEF estimated globally per year 12 million girls married in childhood, one in four children (ages 5 to 17) are engaged in labour, one in three children is not growing well because of malnutrition (NUICEF, 2019).

### OBJECTIVE OF THE STUDY

The main objective of the study is to assess the present status of the children in India in respect of its constitutional commitments towards them. The specific objectives of the study are as follow: -

1. To highlight the various constitutional commitments towards children in India.
2. To evaluate different policies, programmes and the initiatives taken by the government from time to time for the development and protection of the children in India.

3. To examine the global initiatives for the progress and protection of the children.
4. To explore the present status of children in India.
5. To offer policy suggestion of further improvement and protection of the children.

### METHODOLOGY

The study is analytical in nature. For analysis the situation survey method has been used in the research. The data for the present work have been collected from both primary and secondary sources. The primary sources include official document of archival record. Various published books, journals, periodicals, newspapers, website on the subject matter have been taken as a source of secondary data. Both quantitative and qualitative analysis have been done in this paper.

### DISCUSSION

#### **India's Constitutional Commitments Towards Children**

To integrate development of the children, and to protect them from significance harms various constitutional provisions, opportunities and facilities are very much essential. The makers of the Indian Constitution were very much conscious regarding the rights of the children. Though at the time of making of the Constitution the rights of the children were not very lucid. Then it was envisioned that the children are the assets of the country and to steer the nation they need to protection. To protect children, they recognised and included several provisions in our Constitution, which came into force in January 1950, dedicated to children through which India's commitments towards children has been manifested. These are included basically both in Fundamental Rights (Part III) and Directive Principles of state policy (Part IV).

Article 21A states that '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 (Eighty Six Amendment of the Constitution 2002, n.d.). According to Article 23, traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Besides, 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 in accordance with Article 24 of our Constitution. Further, Article 39(e) provides that the State shall, in particular, direct its policy towards securing health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) again assures that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 promises that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years' (Constitution of India, 2020). In addition to these basic rights, the Constitution of India allows the state to enact special laws for protection children and women. Subsection 3 of Article 15 describes that 'nothing in this article shall prevent the state from making any special provision for women and children.'

### **Global Initiatives to Protect Child Rights**

Across the world increasing attention has been paid in recent years to the notions of children rights. It was only during the twentieth century that the concept of children's rights emerged (Bajpai, 2017, p. 2). 'In 1924, the League of Nations (LON) adopted the Geneva Declaration, a historic document that recognised and affirmed for the first time the existence of rights specific to children and the responsibility of adults towards children. Next year the Declaration of Geneva also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even individual countries; the world as a whole had a legitimate interest in the welfare of all children (League of Nations, 1924).' With a mandate to care the world's children in 1946, the United Nations Children Fund (UNICEF) was established. Initially it provided 'assistance to children in Europe and elsewhere who had lost homes, family, and opportunity as a result of the war. Though later UNICEF redefined its mandate so as to give the agency responsibility for long-term assistance to children who suffered from deprivation caused by economic and political conditions, as well as the effects of war. Then in 1948, the provisions of the Universal Declaration of Human Rights recognised that children need protection against all oppressive features and forces.

For the protection of child rights in 1959, the United Nations issued a statement for the first time as a normal direction rather than legally binding framework through the Declaration on the Rights of the Child. The issue of girl child was addressed in part by the conversation on the Elimination of all forms of Discrimination against Women adopted in 1979. Recognising the importance of international cooperation for improving the living condition of children in every country, in particular in the developing countries, the General Assembly of United Nations adopted the Convention on the Rights of Child (UNCRC) in 1989 (Resolution 44/25) which was the most comprehensive international instrument on the rights of the child. It is indeed 'an innovative document in overall human rights theory and practice'. Geeta Chopra considers that 'The UNCRC is a proactive international effort to draw an agreement between nations to give rights and privileges to children across the world'. Through its 54 articles the Convention covers the full range of human rights- social, political, economic, cultural and civic rights of the child. In this treaty children were regarded as a complete individual and allowed them to participate in decisions concerning them and their future rather than an element of economic or socio-political system. The Convention not only provides for monitoring of the performance of States parties at the international level but also what is being done for children at the national level (Bajpai, 2017, p. 32).

### **India's Initiatives to Protect Children**

To ensure the commitments towards children India has taken a numerous legal and policy measures relating to child rights and child development. Besides, as an active partner of different global forums India has ratified various international conventions and declarations in connection with the rights and protection of children. But it is important to note that in India there is no uniformity on the age of an individual in order to be determined as a 'child'. Various India legislations define the child variously as regards the requirement of age. Such as-

- The Indian Penal Code, 1860 defines the child as being 12 years of age.

- Immoral Traffic (Prevention) Act, 1956 defines a “Minor” as a person who has reached the age of 16 years.
- Section 3763 of the IPC which punishes the perpetrators of the crime of rape defines the age of consent to be 16 years of age.
- The Juvenile Justice Act, 2002 defines a male minor as being below 16 years and a female minor as being below 18 years of age.

However, it is estimated that there are more than 250 central and state statutes under which the child is covered in India (Bajpai, 2017, p. 10). Among them some legislations are- Probation of Offenders Act, 1958, Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960, Child Labour (Prohibition and Regulation) Act, 2006, Right to Children to Free and Compulsory Education Act, 2009, Protection of Children from Sexual Offences Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015 etc.

In addition of these laws numerous policies, schemes and plans have been undertaken in India for the protection and development of children. The National Policy on Education 1986 (revised in 1992) was the key milestone in India’s march towards ‘Education for All’. Focus on ‘universal access and enrolment, universal retention of children up to 14 years of age; and a substantial improvement in the quality of education to enable all children achieve essential levels of learning.’ For universalising elementary education Sarva Shiksha Abhiyan launched by the government of India in 2001 and is being implemented as India’s main programme in a time bound manner. Integrated Child Development Services (ICDS) is another programme in India. It is one of the world’s largest programme for early childhood development. ICDS provides pre-school education, nutritional meals, primary healthcare, immunization services to children under 6 years of age. With the basis objective of suitably rehabilitating the children withdrawn from employment and reducing the incidence of child labour in areas where there is a known concentration of child labour, National Child Labour Policy was formulated in 1997. For the overall development and special protection of the girl child in 1992 the Government of India prepared a separate plan – National Plan for the Girl Child- for the period 1991-2000. To secure the rights of the children again in 2013 the government of India adopted a new National Policy for Children (National Policy for Children, 2013).

In addition to these legislations, policies and schemes the government of India has ratified a variety of international conventions and declarations. Among them important are i) The United Nations Convention on the Rights of the Child, 1989 iii) World Conference on Education for All, 1990, iv) World Summit for Children, 1990 v) UN Rules for the Protection of the Juveniles Deprived of their Liberty, 1990 vi) SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution 2002 vii) Optional Protocol on the sale of children, child prostitution and child pornography, 2005 etc.

### **Present Status of the Children in India**

Every day 67,385 babies are born in India, that’s one sixth of the world’s child births and with the birth of 25 million children each year India accounts for nearly one fifth of the world’s annual child births (United Nations Children's Fund, 2020). India’s legislation and policies programmes as well as judicial measures offer extensive safeguards to the human rights of the

children. Yet children are still illiterate, malnourished, exploited, neglected, abused, trafficked and are deprived of their basic right to family care, protection, food, health, and shelter.

UNICEF estimated '6.1 million children out of school in 2014. Out of 100 students, 29 per cent of girls and boys drop out of school before completing the full cycle of elementary education, and often they are the most marginalised children. Around 50 per cent of adolescents do not complete secondary education, while approximately 20 million children not attending pre-school.' According to the report of the National Sample Survey Office (NSSO), '32 million Indian children of age up to 13 years have never attended any school, the majority of them belonging to the socially disadvantaged class. Besides, this survey also revealed that literacy rate among children up to 15 years is 75.4 per cent that is about 24 per cent children in India are out of school.

As per Census 2011, the total child population in India in the age group (5-14) years is 259.6 million. Of these 10.1 million (3.9% of total child population) are working either as main worker or as marginal worker of which 5.6 million are boys and 4.5 million are girls. Among the Indian states and union territories Uttar Pradesh is the top with 896301 numbers of child labours followed by Maharashtra with 496916 numbers and Bihar with 451590 numbers. On the other hand, Sikkim has the lowest number of child labour with 2704 among the 29 Indian states. However, it is noticeable that Census data include only the children up to the age 14 years. If we consider 18 years as the age of 'child' the figure of child labour would be much more.

Across India child labourers can be found in a variety of industries: in brick kilns, carpet weaving, garment making, domestic service, food and refreshment services (such as tea stalls), agriculture, fisheries and mining. Besides, children are also at risk of various other forms of exploitation including sexual exploitation and production of child pornography (UNICEF, n.d.). According to International Labour Organization's World Report on Child Labour 2015, 'children between 14-17 years engaged in hazardous work account for 62.8% of the India's child labour workforce, 10% of whom are hired in family enterprises. Over half of working adolescents do not study. This number is higher for adolescents doing dangerous work. It is not surprising that more boys than girls (38.7 million vs. 8.8 million) are forced into doing hazardous work.'

NFHS 4 (2015-16) data found that still infant mortality rate (IMR) is 41 and under five mortality rate (U5MR) 50. Besides, 35.7 per cent children under 5 years are underweight. Besides, sex ratio of the children under 5 years is 919 and 26.8 per cent girls got married before age 18. (National Family Health Survey 4, 2017)

The International Labour Organisation (ILO) research shows that 80 per cent of trafficked persons are women and girls, and 50 per cent of the victims were minors (Ray, 2015, p. 305). According to National Crime Records 2019 'in India a total of 1,48,185 cases of crime against children were registered during 2019, showing an increase of 4.5% over 2018 (1,41,764 cases) (National Crime Records Bureau, 2019). In percentage terms, major crime heads under 'Crime Against Children' during 2019 were Kidnapping & Abduction (46.6%) and Protection of Children from Sexual Offences Act, 2012 (35.3%) including child rape. The crime rate registered per lakh children population is 33.2 in 2019 in comparison with 31.8 in 2018. A total of 1,08,025 (23,104 male and 84,921 female) victims were reported kidnapped or abducted during 2019, out of which 71,264 (15,894 male and 55,370 female) 2 victims were children and 36,761. Besides,

in 2019 the human trafficking cases were 1113 numbers whereas the cases of selling minor for prostitution were 28 of which 26 were girls and only 2 were boys. Significantly crime against children is increasing day by day. In 2015, total registered cases of crime against children were 94172 which increased 57 per cent with 148185 in 2019. Human trafficking, especially that of children and women in South Asia (India, Bangladesh and Nepal), is a consequence of, and impediment to, socio-economic development, threatens national, regional and international security, and most importantly, the security of individual (Koirala, 2014, p. 224). Various studies reveal that contemporary traffic in women and children in Europe and Asia is related to prostitution and other forms of sexual exploitation (mainly the pornography industry) (Aroma, 2006, p. 133). Sex trafficking constitutes one of its major forms wherein primarily women and children are coerced for the purpose of commercial sexual exploitation.

Child marriage is another area of concern in India. UNICEF data shows that India alone accounts for one third of the global total of child marriage. Besides, India stands fifth in position with 58% within South Asia and Sub-Saharan 10 countries. District Level Household and Faculty Survey-3 (2007-2008) estimated in India more than one-fifth (22%) of the girls are married before attaining the legal age of marriage. As per Census 2011 about 30.21% of all married women (or 10.3 crore girls) were married before they had turned 18.

In addition to the above circumstances, there are numerous children who have been spending their lives in especial difficult circumstances such as homeless or street child, orphan and abandoned child, beggars, domestic workers etc. Savita Bhakhry rightly point out that the burning issues relating to children are the adverse child sex ratio, persistently high infant and child mortality ratios, wide gender gaps in literacy, escalating violence against children especially against the girl child and the rising incidents of female foeticide, female infanticide and child marriage.

### CONCLUSION AND RECOMMENDATION

The above discussion makes it clear that we are far behind to reach the constitutional target towards children in India. A large number of children in India still in vulnerable position. Many children are denied basic rights, opportunities and a secure childhood as committed by our constitution. We need to urgently address these issues. To ensure the constitutional commitments towards children some suggestion could be cited-

- The existing laws relating to Child labour, child marriage and child trafficking must be implemented properly by making strengthening law enforcement mechanism. In maximum time violators of the law do not get punishment for their offence. Government and law implementing authorities have to be more active in this regard.
- Child labour, child marriage and child trafficking etc. are both a cause and consequence of poverty. Without improving the economic condition of the child, abolition of child labour is almost impossible. Government needs to generate more opportunity of employment specially among poor citizens.
- The active involvement of the government and anti-trafficking measures require at local and central level in tackling child trafficking. Besides, to share information, coordinate

prevention, care and protection practices and to exchange expertise collaboration is needed among the countries.

- Awareness must be built among citizens about the negative impact of child marriage, child labour and child trafficking etc. More campaigning programme must be launched focusing on information dissemination on child right and sensitization activities.

### REFERENCES AND BIBLIOGRAPHY

- 1) Aromaa, M. L. a. K., 2006. Trafficking for Sexual Exploitation. *Crime and Justice*, 34(1), pp. 133-227.
- 2) Aroma, M. L. a. K., 2006. Trafficking for Sexual Exploitation. *Crime and Justice*, 34(1), pp. 133-227.
- 3) Bajpai, A., 2017. *Child Rights in India Law, Policy, and Practice*. New Delhi: Oxford.
- 4) Bhakhry, S., 2006. *Children in India and their Rights*. New Delhi: National Human Rights Commission.
- 5) Chopra, G., 2015. *Child Rights in India Challenges and Social Action*. New Delhi: Springer (India) Pvt. Ltd..
- 6) Constitution of India, 2020. *Constitution of India*. [Online] Available at: [https://legislative.gov.in/sites/default/files/COI\\_1.pdf](https://legislative.gov.in/sites/default/files/COI_1.pdf)
- 7) Crane, J., 2018. *Child Protection in England 1960–2000: Expertise, Experience, and Emotion*, London: Palgrave Macmillan.
- 8) Eighty Six Amendment of the Constitution 2002, n.d. *The Constitution (Eighty-sixth Amendment) Act, 2002*. [Online] Available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-eighty-sixth-amendment-act-2002> [Accessed 29 July 2021].
- 9) Koirala, A., 2014. Trafficking and Vulnerabilities of Children And Women: An Analysis. *India International Centre Quarterly*, Winter, 41(3), pp. 223-135.
- 10) League of Nations, 1924. *Geneva Declaration of the Rights of the Child, 1924*. [Online] Available at: <https://www.humanium.org/en/geneva-declaration/> [Accessed 21 July 2021].
- 11) Mukhopadhyay, A., 1994. Girl Child in Three Indian States. *Economic and Political Weekly*, 4 June, 29(23), pp. 1378-1382.
- 12) National Crime Record Bureau, 2019. *Crimes in India*, New Delhi: Government of India.
- 13) National Crime Records Bureau, 2019. *Crime in India 2019 Statistic Volume I*, New Delhi: Government of Indi.
- 14) National Family Health Survey 4, 2017. *National Family Health Survey, India*, Mumbai: International Institute for Population Sciences.
- 15) National Policy for Children, 2013. [Online] Available at: [https://wcd.nic.in/sites/default/files/npcenglish08072013\\_0.pdf](https://wcd.nic.in/sites/default/files/npcenglish08072013_0.pdf) [Accessed 9 August 2021].
- 16) National Sample Survey 2014, 2014. *NSS 71st Round*, New Delhi: Ministry of Statistics and Programme Implementation, Government of India.

- 17) UNICEF, 2019. State of World Children, s.l.: UNICEF.
- 18) Palanichamy, A., 2016. Child Rights, Poverty and Protection: An Indian Perspective. Journal on Rights of the Child, 1(1), pp. 1-18.
- 19) Ray, S., 2015. Of Vulnerability and Coercion: A Study of Sex Trafficking in Assam. Sociological Bulletin, 64(3), pp. 305-324.
- 20) UNICEF, n.d. Unicef for Every Child, India. [Online] Available at: <https://www.unicef.org/india/what-we-do/child-labour-exploitation> [Accessed 5 August 2021].
- 21) United Nations Children's Fund, 2020. For every child, reimagine UNICEF Annual Report, 2019, New York: Unicef.
- 22) Wang, B. v. d. K. a. L., 2011. Child mortality in rural India. Journal of Population Economics, 24(2), pp. 601-628.

#### DECLARATION

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