

Child Rights and Child Protection: Issues, Challenges and Strategies Role of Judiciary in Protecting Child Right

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ABSTRACT

Children's are greatest gift to humanity. Children are valuable asset of any country as they are ray of hope in future. If the children are better equipped with a border human output, the society will feel happy with them. Neglecting a children means loss the society as whole. Article 14 of the Indian Constitution provides equality before law and equal protection of laws to all including children's too. United Nation Convention on the rights of the child, 1989 is one of the binding agreement saying what rights children should have. Indian Judiciary plays a vital role in the protection of fundamental rights of the citizen and non-citizen alike. In this modern era judicial activism emerged as tool for protecting rights of the children. Paper contains landmark judgement of Supreme Court of India and covers every area of children's rights.

Keywords : Child, Human Rights, Sexual Abuse, Adoption, Rehabilitation

I. INTRODUCTION-

Childhood shows the man, as morning shows the day.....**John Milton**

This quote of the great English poet aptly depicts the importance of a child in our lives.

Children are valuable asset of any country as they are the ray of hope in future. India is known to be the country of Dhurva, Prahlad, Abhimanyu, Love, Kusha. According to Hindu Philosophy "A child is considered to be Bhagwad Swaroop". The role of the Indian Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of tremendous growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizens and non-citizens alike. The twin safeguards of equality before law and equal protection of laws are

acknowledge as two of the most important pillars of human rights of the universe of freedom that is where ever freedom to assert human rights is recognized, whether under an unwritten or a written constitution. India is the largest democracy in the world, a sovereign, socialist, secular, democratic and republic with a comprehensive charter of rights written into its constitution. The Indian Constitution lays down base on which is foreign policy should be constructed and its international obligation respected. These base are articulated principally in Article 51, which occurs in Part IV of the Indian Constitution.

The true nature and scope of the function of the court has since long been a matter of debate almost in the countries regulated by written constitution. **Austinian jurisprudence** gives a very narrow view of the judicial function. Austin defined law as a command of the political sovereign and his sovereignty was indivisible and absolute, only the legislature could make law. The function of the court was merely to declare the pre-existing law or to interpret the statutory law. But on the other hand, the realist movement in the United State the latest branch of sociological jurisprudence which concentrates on decisions of law courts. Regards and contend the law is what court says. For them, judges are the law makers. The entire common law is the certain of the English courts but is posited on the myth that judge merely found law. Even with such self-negating perception of their own role, the English judges not only made law but also changed it to suit entirely new conditions created by the industrial revolution, In this modern era Judicial Activism emerged as tool for protecting Rights of the Children including protection from sexual exploitation, child trafficking, child abuse etc. some cases are dealt by the Indian Judiciary for the protection of child rights are as follows-

Child Labour and Right to Education-

Children constitute 36 per cent of Indian population and it's a matter of national worry that bulk of them still suffer from malnutrition, poverty, disease, cruel exploitation, through forced child labour and beggary and top of ill illiteracy. Lacs of children roam without homes/asylums in streets and can see them in plenty in streets of Delhi, Mumbai, Kolkata, Chennai, Bangalore, Hyderabad, Kanpur, Jaipur and other cities. It is monumental shame that 30 million street children worldwide, 11 million are Indian children. Even though India has the largest number of child labourers in the world. India too is a home to about 430 million children and as a consequences rights of children and their aspirations are of paramount importance in our march towards an inclusive and equitable society.

Since independence, India has developed its own jurisprudence concerning children and the recognition of their rights which are evident through various legislation namely The Constitution of India, Indian Penal Code, 1860, Right of Children to Free and Compulsory Education Act, 2009, The Child Labour (Prohibition and Regulation) Act, 1986, Protection of Children from Sexual Offences Act, 2012, Hindu Adoption and Maintenance Act, 1956, The Juvenile Justice (Care and Protection) Act, 2015 Mines Act, 1952, Factories Act, 1948 and many more. This paper is to analyse and understand the different aspects of children's rights in the light of various legislations and judicial responses.

Education is critical for economic and social development. It is crucial for building human capabilities and for opening opportunities. The importance of education was fully recognized by classical economist and social scientist such as Adam Smith, John Stuart Mill, Schultz, Becker and Amartya Sen. Alfered Marshall in the principles of economics observed as follows :

The wisdom of expending public and private funds on education in not to be measured by its direct fruits alone. It will be profitable as a mere investment, to give the masses of the people much greater opportunities, then they can generally avail themselves of. For by this means many, who would have died unknown, are able to get the start needed for bringing out their latent abilities. The most valuable of all capital is invested in human beings.

The abolition of child labour must be preceded by the introduction of compulsory education since compulsory education and child labour laws are interlinked. Article 24 of the Constitution bars employment of child below the age of 14 years. Article 45 is supplementary to

Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some education institution. The court in series of cases has unequivocally declared that right to receive education by the child workers in an integral part of right of personal liberty embodied in Article 21 of the Constitution.

In M. C. Mehta Vs State of Tamil Nadu AIR 1991 SC 417 – The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, and positive steps should taken for the welfare of such children as well as for improving the quality of their life.

In Goodricke Group Ltd Vs Center of West Bengal 123 CTR 516 the court held that it would be for the center and state/union territories to raise necessary resources to achieve the goal providing free education.

In India the Supreme Court in the **Unnikrishnan J. P. Vs State of Andhra Pradesh AIR 1993 SC 2178** Judgement that Part III and Part IV of the constitution of India is not only supplementing and complimenting each other mutually but are also inter related to each other. It is a path breaking judgement in the history of education which gave the status of fundamental right to free and compulsory education to all the children between the age of 6-14 years or until the completion of elementary education and accepted and approved the right to education as fundamental right of all children. In its continuing effort in providing elementary education to children to across the country.

After the 86th Constitutional Amendment in 2002 the Parliament passed a landmark legislation called the Right of Children to Free and Compulsory Education Act or widely known as Right to Education Act, 2009 which included the Article 21 A in the Indian constitution and thus making education a fundamental right.

Child Labour Welfare and the Locus Standi-

The liberalization of the concept of Locus Standi, to make access to the court easy, is an example of the changing attitude of the Indian Courts. It is generally seen that the working children by and large come from the families, which are below the poverty line, and there are no means to ventilate their grievance that their fundamental rights are being breached with impunity, keeping in view the pitiable conditions of the child workers, the apex court has shown its sensitivity towards the poor people by relaxing the concept of Locus Standi.

One important case in which Supreme Court entertained a letter, sent by post as public interest litigation was **the People's Union for Democratic Rights Vs Union of India AIR 1982 SC 1472** also known as Asiad Workers case. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article 24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 was enforceable even in the absence of implementing legislation and in a public interest proceeding.

They have no faith in the existing social and economic system. A high water mark in the application of the Article 24 of the Constitution was reached in the decision of the court in **Salal Hydro Project Vs Jammu and Kashmir AIR 1987 SC 177** wherein the court reiterated the above stand. The court maintained that child labour is an economic problem. Poor parents seek to argue their meager income through employment of their children. So, a total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. Article 24 therefore, puts only a practical restriction on child labour. The court further observed that so long as there is poverty and destitution in this country, it will be difficult to eradicate child labour.

Bandhua Mukti Morcha Vs Union of India 1997(10) SCC 549, took into cognizance the employment of children in the carpet manufacturing industry in Mirzapur, Uttar Pradesh. It instructed the District Magistrate to conduct raids and subsequently got 144 children, who were under the forced custody of the owner, released.

Juvenile Justice-

The Juvenile Justice (Care and Protection) Act, 2015 is enacted as human rights legislation and it is now in force in all states uniformly, repealing by the entire Children's Act enacted by states individually. This legislation deals with the two types of juveniles. "Juvenile in conflict with law" as defined under section 2(1) and child in need and protection as defined under section 2(d). A juvenile or a child is a person who has not attained the age of 18 years. The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall

be segregated from adults and be accorded treatment appropriate to their age and legal status.

In **Sheela Barse Vs Union of India 1986 3 SCC 596** Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The court observed that the children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The court urged the setting up of remand and juvenile homes for children in jails. In **Sheela Barse Vs Secretary Children Aid Society AIR 1987 SC 656** the Supreme Court came forward to protect the rights of children in the observation homes.

Adoption of Children-

Adoption concerns two of our basic human concerns identity and family. A child's right to an identity and family are now universally recognized. They are enshrined in the United Nations Convention on the Rights of the Child, 1989.

The Activist Supreme Court of India in **Lakshmikant Pandey Vs Union of India AIR 1986 SC p. 1272-** This writ petition has been initiated on the basis of a letter addressed by one Lakshmikant Pandey, an advocate practicing in this court, complaining of male-practice indulged in by social organization and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter referred to a press report based on "empirical investigation carried out by the staff of a reputed foreign magazine" called "The Mail" and alleged that not only Indian children of tender age are under the guise of adoption "exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents." The petitioner accordingly sought relief restraining Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and direction the Government of India, The Indian Council of Child Welfare and The Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents. This letter was treated as a writ petition

and by an order dated 1st September, 1982 the Court issued notice to the Union of India The Indian Council of Child Welfare and The Indian Council of Social Welfare to appear in answer to the writ petition and assist the court in laying down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents and if so, the procedure to be followed for that purpose, with the object of ensuring the welfare of the child. In this case the Supreme Court held that any adoption in violation of or non-compliance with may lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. For years, social activists have used these directions to protect children and promote desirable adoption. The Government of India framed a national policy in this regard.

Sexual Exploitation of Children-

Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been retreated by the Universal Declaration of Human Rights. The human rights for women, including girl child age, therefore, inalienable, integral and indivisible part of universal human rights. All forms of discrimination on ground of gender are violation of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

In **Bachpan Bachao Andolen Vs Union of India** writ petition filed by HRLN, Supreme Court on 18.04.2011 has ordered for implementation of suggestions put forth during the hearing of this case, which will introduce significant reforms in existing child protection regime. The petition was originally brought in 2006 on issue of abuse and exploitation of children in circuses industry. Court has ordered Central Government to bring a notification prohibiting employment of children in circus, to conduct raids to rescue children already working in circuses and frame proper scheme for their restoration. During the hearing in this case, several recommendations were put forth by petitioner and respondent, aimed on reforming existing legal and procedural mechanism on child protection. This order is just one among the several orders which may be given by Hon'ble Supreme Court in due course of time as Hon'ble Court has made clear its intention to deal with issue of children's exploitation in a long term and systematic manner. Assuring to deal with children's exploitation firmly, Supreme Court has

observed : "We plan to deal with the problem of children exploitation systematically".

In **Vishal Jeet Vs Union of India AIR 1990 SC 1413-** Supreme Court in this case deals with some seminal questions relating to the sexual exploitation of children. Here it has been observed that it is highly deplorable and heart rending to note that many poverty stricken children and girls in the prime age of youth are taken to the 'flesh market' and forcibly pushed into "flesh trade" which is being carried in our utter violation of all cannons of morality, decency and dignity of mankind.

In **Gaurav Jain Vs Union of India AIR 1997 SC 3051,** The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its registry.

Shakshi Vs Union of India 1999 8 SCC 591, In this public interest litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 Indian Penal Code, 1860.

Rehabilitation of Child Prostitutes-

The rescue and rehabilitation of the child prostitutes and children should be kept the Nodal Department, namely ; Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the Juvenile Justice (Care and Protection) Act, 2015. They should not be left to themselves, but should be rehabilitated through self-employment scheme or such measures as are directed by the Supreme Court in this case. The juvenile homes should be used only of a short stay or relieve the child prostitutes and neglected juveniles from the trauma they would have suffered. They need to be rehabilitated in the appropriate manner. The details are required to be worked out by meaningful procedure and programmes. In the light of the direction already given by this court from time to time to the Central Government, State Governments and Union

Territory Administration, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juvenile. They should take measures to provide them adequate safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or state government concerned. A nodal committee with the public spirited NGOs, in particular women organizations women members should be involved in the management. Adequate encouragement may be given to them. The needed funds should be provided and timely payments disbursed so that the scheme would be implemented effectively and fruitfully.

II. CONCLUSION-

Shri Kailash Satyarathi was felicitous with Nobel Prize for working in the field of child labour. He said “stringent action must be taken against those persons who get the hazardous tasks done by the children.”

The brief survey above mentioned the cases shows that the activism of the Indian Supreme Court to protect the children from various type of exploitation. Although the Supreme Court made laudable directions and suggestions in many instances to protect basic rights of poor children, unfortunately these directions and suggestion are not followed and implemented by the government machinery effectively. In this regards, the performance of the Indian Judiciary stands out as a signal contribution to the implementation of human rights generally and that of Child Rights particular. The judiciary has always made concrete efforts to safeguard them against the exploitative tendencies of their employer by regularizing their working hours, fixing their wages, laying down rules about their health and medical facilities. The judiciary has even directed the states that it is their duty to create an environment where the child workers can have opportunities to grow and develop in a healthy manner with full dignity in consensus of the mandate of our constitution.

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