



Research Paper

## Child Rights in Indian Constitution: An Analysis

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### Abstract

Child rights are the claims of every child a human being to the government for growth and development without any kind of discrimination. This research paper focuses on children's rights enshrined in the Part-III and IV of Indian Constitution which promote equality, fairness and the holistic development of children. Articles 15, 21-A, 24, 39, 45 and 51 A of Parts III and IV that are exclusively related with children are analyzed to prevent the children from exploitation. At the end of this paper some suggestions are incorporated for the protection of child rights. The Indian Constitution, secondary sources and qualitative research methodology are used to write this research paper.

**Key Words:** Child, Human Rights, Fundamental Rights, Directive Principles

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Human rights are inalienable entitlements, they belong to every individual because of their human nature regardless of race, sex, gender, nationality or any given social group like religion, caste and creed.<sup>1</sup> Human rights are requirement that one needs to have in order to develop normally as a complete individual. In addition, the rights also enable people to live without fear, harassment or discrimination since it deals with equality and fairness. Nowadays the notion of human right has come as eaching word of International politics and standard norm of the UN actions. Therefore, because of these commitments human rights norms are universal value.<sup>2</sup> It is a famous Chinese saying for children;

*"If you have to plan for a year, sow corn.  
If you have been plan for a generation, plant trees.  
If you have to plan for life, train and educate children.?"*

The human resources in a country are its major asset and they ought to be nurtured to become complete individuals that are able to positively contribute not only to their own welfare but also of humanity in general. Children are the greatest asset of a nation and a gift that God has given to humanity. They have to be accorded utmost priority on the global front since they are immature and vulnerable. The future of our civilization depends on the way we bring up our children ethically, physically and intellectually. They are to be ensured a conducive environment besides proper dressing, food, accommodation, and education. Until a new vision of a sustainable human civilization is on the horizon, we will continue to deprive our future generations the chance to grow up to become full-fledged human beings. Childhood is known to have many disabilities that render the child vulnerable and thus relying on adults and the general community. Due to this fact, all people might admit that children require additional attention and support.<sup>3</sup>

According to Pixie Yangailo, Chairperson of Human Rights Commission, "children are the most vulnerable group in society due to the physical, emotional and psychological immaturity and subsequent dependence upon adult".<sup>4</sup> Therefore children require special measures to ensure they are not exploited in any way since such practices negatively affect their growth and development of the personality capabilities.

Before discuss about the rights of children in Indian Constitution, It is important know the meaning of child from international and national perspectives. Child is not a simple term, everyone define child with regard to their nationality, background and understanding. However the Convention on the Rights of Child (CRC) defined "child as all human beings under the age of 18

years, unless any other age of majority is recognized by a relevant national law". Similar to this definition the African Charter on the Rights and Welfare of the Child defines "child as a human being below the age of 18 years. In simple word everyone below the age 18 years is called child". But if we see from Indian perspective the meaning of child is not generalized. Now after the adoption of Child Right Convention, Government of India has been active regarding to achieve the consensus upon the age of child through amendments in legal initiatives. Article 23 of our Constitution does not mention who is child, but prohibits the child from employment under the age of 14 and further Article 21A also provide a right of free and compulsory education till 14 years.<sup>5</sup>

A revolutionary chapter on the child's rights was effective since January 26th 1950, when Indian Constitution introduced after independence. Prior to its enactment, there were snippets and snatches of different legislations that addressed child rights. The Constitution of India was the first document which recognize a right of the child and referred to them in a number of articles about their literally, their livelihood, the development of childhood, non-discrimination in the educational fields, compulsory and free education and the ban on their taking part in the work in the factories, mines and any risky jobs.<sup>6</sup>

The structure of Indian Constitution is amazing with regard to human rights because it is one of the first and the greatest efforts towards conflict resolution between on the one hand (a) the political and civil rights and the social and economic rights on the other or between individual and social rights. The entire structure of Constitution is based on a philosophy that suggested the existence of conversation between individualism and social order. The equal significance of the two sets of rights was a non-debatable issue for Constitution makers. To them human rights were indivisible. For human satisfaction coexistence of social and economic rights, as well as civic and political rights are essential and this is in individual as well as community interest. In this regard, the Preamble of the Indian Constitution, Chapter III of the Fundamental Rights, and Chapter IV of the Directive Principles of State Policy all mention the protection of children's interests and rights. The young age of children and their requirements about growth and development served as inspiration for the Indian Constitution's framers. Thereby they made the necessary provisions to establish the environment that would help the children in maturing gradually into childhood. The articles 15, 24, 39 and 45 record the special provisions with the direct relevance to the development of the children.<sup>7</sup>

Children require special care especially in a poverty stricken country like India where a lot of working children and man still struggle his daily battle to get two meals a day. In this sense the social, economical and cultural rights are fundamental as compared to the civil and political right. The civil and political rights are considerate only when the fundamental requirements of human living are met. Though, Preamble does not make any particular proclamation on the safeguarding of the rights of the child, but it definitely establishes general agreement in the provision of economic and social justice. Children should be guaranteed of their fundamental rights to developing in a healthy environment that will enable their growth and development to the fullest possible extent so that they shall become future of country and will make him a human being with dignity. Referring to Preamble, these aspects can be guaranteed because it determines to found the society on justice, equality, liberty and fraternity.<sup>8</sup>

In consideration of the welfare of children, the philosophy of the Indian Constitution regarding children is clear under Article 15, Article 24, Article 39, Article 45, wherein the principle is not to exploit, forced labour, child labour, trafficking in human beings and any form of Abuse. Article 15 (3) of the constitution especially empower the State to take any special Provisions to protect the interest of children due to their tender age and immaturity. Next to that under Article 15 (4), State can give special provision in promotion of any socially and educationally backward class. The working children, to the right minded people, do form a backward class (socially and educationally) and it is a powerful provision to safeguard the interest of children. To fulfill the requirement of Article 15 (4), the class should be socially and educationally backward. The end analysis is that social backwardness is the consequence of poverty. The social backwardness which forms as an outcome to poverty is likely to be worsened in view of cast but the backwardness cannot be considered on basis of caste alone.<sup>9</sup>

Right to education as a fundamental right under article 21 (a) is inserted through 86th amendment to constitution of India in 2002. Article 21 (a) of the constitution states: The state shall direct its education policy to ensure that the education of all children, youths and adults is directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms and to promoting understanding of and friendship between peoples. The Government of India took three years for work on the Right to Education Bill, 2005 that was implemented after waiting of another three years when its draft to be finally endorsed by the Union Cabinet in November, 2008.<sup>10</sup> It is now an act called Right to Education Act, 2009.

The Constitution of India, Chapter III also guarantees rights against exploitation through trafficking and bonded labour in Article 23 and Article 24. Traffic in human being implies selling and purchase of men, women and children as commodities and involve them in immoral or other illegal motives. Begging means un-

paid forced labor. The Supreme Court considered the legal status of beggar and declared in the case of *Peoples Union for Democratic vs. Union of India* as a forced labour where an individual is forced to do work without remuneration. Forced labour is against human dignity and the basic human values that is the reasons Article 23 strike on forced labour in all forms. Article 23 protects the individual not just against State, but against the private citizens as well. It subjects the State to a positive obligation to engage in efforts to eliminate evils of traffic in human being, begging and other kinds of forced labour as they exist anywhere. It forbids the system of bonded labour as it is a form of forced labour under this article. The applicability of this article is not only limited to citizens, but also applies to non-citizens.<sup>11</sup>

Article 24 makes it illegal to employ children under 14 years of age in factory, mine or other dangerous employment. It is an essential provision for the protection of health and life of the children. Article 39 of Directive Principles of State Policy places an obligation upon state to have health, strength of children, non-exploitation and abuse of tender age of children because of economic necessity, coupled with article 24 is a powerful set up to uphold the interest of children. It has to be mentioned that Article 24 does not establish any absolute prohibition on the employment of children. The said article extends to minors who are under the age of 14 years. Secondly, employment of children below 14 years of age in non-hazardous employment is not prohibited in this article.<sup>12</sup> Other basic rights under Chapter III, of the Constitution in addition to the above said, are also available to the children, as to any other citizen e.g. freedoms under Article 19 or equal opportunity in public employment under Article 16 etc.<sup>13</sup>

The Constitution of India in their part IV comprising a list of directives and instructions for different Governments regardless of their political ideology. They are the representation of the ambitions and aspirations of the framers of the Indian Constitution who wrote them with the limitless faith in their associations of social, economic and political justice. Such guidelines are present in the form of positive obligations imposed on the State according to social, economical and political justice.<sup>14</sup>

The welfare of the children is guaranteed by Directive Principles under Articles 39 (e), 39 (f) and 45 so that childhood could be secured against exploitation and abandonment of a moral and material. Children are not required to take up vocations due to economic compulsions which are not suited for them by age and strength. The State has the responsibility to increase the level of nutrition, the standards of living and to establish a better public health. Increasing the level of nutrition, flourish the standard of living of its population and improving the health of the people shall be considered among the first duties of the State.<sup>15</sup>

Article 45 places a duty on State to take steps for providing a free and compulsory education to all children up to the age of fourteen years within ten years from the commencement of Constitution of India. This provision is amended through 86th amendment. Now it is the obligation of state to provide free, compulsory and elementary education to all children from age 6 to 14 years. India have understood and accord due significance to education as a agent of social change for to produce mature future citizens. Most of the states in India have been able to provide free and compulsory education till the age of 14yrs or even higher till high school levels. The commitment of India is also seen in mid day meal scheme for students. Despite of these attempts, much should be done in the education sector to capture millions of child workers in India who have left school because of financial constraints. The implications of education are also mentioned in article 41 in general terms.<sup>16</sup>

Article 42 and 43 are important till the children are considered as working children and they have rights i.e. to fair and humane terms of labor, wage, decent mode of living, enjoyment of recreation, and social and cultural privilege. The most challenging aspect of the implementation of Directive principles of State policy in real sense is the fact that they are not justifiable as opposed to fundamental rights. But they do not present such bad images. Article 37 provides that Directive principles in part IV shall not be enforceable in any court of law but nevertheless they are essential as to governance of country and as a duty on government. When government disregards it, then they are answerable to the people during elections, so the pressure of people and election will ensure that the Govt. stays in action to fulfill the objective of the Directive Principles of State Policy.<sup>17</sup>

In this way the Constitutional gives right to all children to have the right to health, well-being, education and social protection without any discrimination based on caste, birth, colour, sex, language, region, social origin, property or birth alone. In the list of fundamental duties of the citizens of India as outlined in article 51-A, it is stipulated that the citizens of India shall work in a way that the nation continually ascent to greater heights of effort and accomplishments. But without giving facilities to the children and providing them with opportunities, the country will not gain human resources and good citizens.<sup>18</sup>

The adoption and implementation of laws and policies for the welfare of children heavily depend on public opinion, which is mainly influenced by the work of NGOs and advocacy groups. The rights-based approach has considerable consequences on the public policy about child development services. Its basic principle consists in the fact that, according to the Indian Constitution, everyone has the right to access to a specific set of opportunities and facilities without having to undergo the analysis of benefit-cost or justify it on a case-by-case basis. The Indian government has implemented a number of child welfare initiatives in order to fulfill its

constitutional obligations. However, it now takes strong political will supported by revolutionary changes in national and individual attitudes and priorities to turn well-meaning intentions into practical outcomes.<sup>19</sup>

The Constitution of India provides only a broad understanding of child rights, while there is a separate, extensive legal system to implement these rights of children. Even though the Constitutional guarantee of rights enshrined in the Constitution, millions of children face discrimination. Therefore, while lack of awareness among parents and sensitivity towards children in society are responsible, many social evils such as child labor, child abduction, child marriage, child rape, etc. also contribute to it. Poor parents are also forced to seek employment for their children irrespective of the fact of their maltreatment and exploitation at work places. The government should implement the laws more seriously to faithfully implement the rights granted in the Indian Constitution. Civil society, considering it its responsibility, should also approach various government departments to protect the rights of children and bring issues related to children to the attention of the government. Since the family is a basic unit of society, the family should be informed about the rights of children so that awareness is created in society about the rights of their own and other children. Schools, colleges, playgrounds, religious places and social media etc. can be easily used to create awareness about children's rights. Only an aware society can protect its children and provide them with a better childhood.

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- [4]. *The Times of Zambia* (Ndolo), 21 January 2008
- [5]. Mamta Rao, *Law Relating to Women and Children*, Eastern Book Company, Lucknow, 2012, p.559-560
- [6]. Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, NewDelhi, 1974, p.50. *See Also*, Gopal Bhargava, *Child Labour*, Vol. 2, Kalpaz Publication, New Delhi, 2003, p.61
- [7]. Ibid
- [8]. R.A. Jahagirdar, "Human Rights: The Indian Experiments" in R.S. Pathak (ed.), *Human Rights in the Changing Word*, International Law Association, New Delhi, 1988, p.94. *See also*, G.S. Bajwa, *Human Rights in India: Implementations and Violations*, Annol Publications Pvt. Ltd., New Delhi, 1995, pp.184-185.
- [9]. Part III of the Indian Constitution contains a long list of fundamental rights. Fundamental Rights are limitation upon all the powers of the Government, executive as well as legislative and they are essential to the preservation of public and private rights, notwithstanding, the representative character of political institutions. The rights are regarded as fundamental because they are most essential for the individual for the development of his full intellectual, moral and spiritual potentialities. The negation of these rights will keep the individual's personality undeveloped. The declaration of fundamental rights in the constitution limits the range of government activity in appropriate directions in the interest of the liberty of the citizens. *See also*, Constitution of India, Article 15 states that :“(1) *The State shall not discriminate against any citizen on the grounds of religion, race, cast, sex and place of birth or any of them.* (2) *No citizen shall, on the ground only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition which regard to: (a) Access to shops, public restaurants, hotels and place of public entertainment; or (b) The use of wells, tanks, bathing Ghats, roads and place of public resort maintained wholly or partly out of State Funds or dedicated to the use of the general public.*(3) *Nothing in this article shall prevent the State from making any special provisions for Women and Children.* (4) *Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and Scheduled Tribes.*” C.K. Shukla and S. Ali, *Child Labour: Socio-Economic Dimensions*, Sraup & Sons, New Delhi, 2006, p.91
- [10]. Triloki Nath vs. State of Jammu & Kashmir, 1969, I.S.C.W.R.489. *See Also*, Lakshmidhar Mishra, “Abolition of Child Labour and Right to Education”, *Mainstream*, December 19-25, 2008, p.57
- [11]. Constitution of India, Article 23 states that: (I) “*Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.* (II) *Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or nay of them.*” Raj Bahadur Vs. Legal Remembrancer, AIR 1953, Cal.522 *See also*, Bajwa, n.8, p.213
- [12]. Constitution of India, Article 19 gurantees some of the Fundamental Rights essential for the restoration of the dignity of individual personality. It reads: All citizens shall have the right: (a) To freedom of speech and expression; (b) To assemble peaceably and without arms; (c) To form associations or unions; (d) To move freely throughout the territory of India; (e) To reside and settle in any part of the territory of India; (f) To acquire, hold and dispose of property; and (g) To practice and profession, or to carry on any occupation, trade or business.. *See also*, Constitution of India, Article 16: Equality of opportunity in matters of public employment (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State; (3) Nothing in this article shall prevent Parliament from making any law prescribing, in to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment; (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State and (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination
- [13]. Shukla & Ali, n.9, p.93
- [14]. There are following provisions endeavoring to achieve the objective of child welfare: *Article 39 (e) states that, “that the 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) states that, “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".* D. Sarada and N. Rajani, *Child Rights and Young Lives: Theoretical Issues and Empirical Studies*, Discovery Publishing House, New Delhi, 2009, p.8.
- [15]. K. Kumar & Punam Rani, *Offence Against Children: Socio-Legal Perspective*, Regency Publications, New Delhi, 1996, p.95
- [16]. Constitution of India, Article 41 states that, "The State shall, within the limits of its economic education and to capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want." See also, Constitution of India, *Article 45 states that, "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years"*.
- [17]. Constitution of India, Article 42 states that, "The State shall make provision for securing just and humane conditions of work and for maternity relief ". See also Constitution of India, Article 43 states that, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas." and Constitution of India, Article 37 states that, "The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. "
- [18]. Rao, n.5, pp.555-556
- [19]. Sarada & Rajani, n.14, pp. 8-9