



## Constitution of India and child rights safeguarded under it.

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### Abstract

The Constitution of India provides for free and compulsory education for children from 6-14 years under Article 21A. This is now also a fundamental duty of parents and guardians to educate the children from 6-14 years under Clause(K) of Article 51A. The 86<sup>th</sup> Amendment of the Constitution of India in 2002 has brought about a sea-change to millions of lives who are from 6-14 years. The U.N. Convention on the Rights of the Child 1989 brought all children under one umbrella to safeguard their Human Rights.

This paper represents the rights of children under the constitution relating to human rights, Right to Education, rights of the children below the age of 6 years, rights against exploitation, child labour, policies of the government regarding children, national policy for children, national policy of education regarding children, national health policy and also different judicial decision on above matters.

**Keywords:** Right to Education, Human Rights of children, National policies, Constitutional safeguards.

### 1. Introduction

The constitution of India provides several provisions for safeguarding the rights of the children and also it provide the provision for free education to the children below 14 years of age. With passing of the Right to Education Act, access to free education to children below the age of 14 years has become a fundamental right. Article 39, Article 41 and 42 etc. provides provision for protection of health and strength of workers, men and women and of tender age of the children against abuse, and provides opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and integrity. By implementing those provisions the children have been given an opportunity for developing themselves in all rounds of activities. Under Article 15(3) of the Constitution of India special provision for women and children can be made by the legislature for all round development of the child. Apart from all round development, all these provisions aim at protecting the rights of the child which they acquire from their birth.

The constitution of India recognized the rights of children for the first time and included several articles

dealing with their liberty, livelihood and development of childhood, non-discrimination in educational spheres, compulsory and free education and prohibition of their employment in factories, mines and hazardous industries.

### 2. Objectives of the study

This paper seeks to highlight the human rights and the constitutional safeguards given to children. It is the duty of the State to provide proper health-care facilities to all children. This study focuses on the rights of child granted under the constitution of India and also keeping in mind the U.N. Convention on Rights of Child.

### 3. Significance of the study

This study has a tremendous significance. Children are the most vulnerable sections of the society. So to protect them is the responsibility of the society. It is the duty of the citizens to help, guide and protect this vulnerable section of the society. Then only we can make a developed India as children are the future of our country.

#### 4. Methodology

The methodology adopted in preparation of this research paper is doctrinal in nature and comprises of secondary sources. Secondary sources includes text books by various authoritative writers , news papers, law journals, Supreme Court journals, articles etc.

#### 5. Review of literature

In this paper the study focuses on the background of the emergence of Constitutional Rights of children. The roots of the Constitutional Rights is embedded in the U.N. Convention on the Rights of the Child 1989.

1. Article 26 of Universal Declaration of 1948 was proclaimed by the General Assembly as a Common Standard of achievement for all people and all Nations. This Paper provides that education shall be directed to the full development of human personality and the strengthening of respect for human rights and fundamental freedoms. Elementary education shall be compulsory.

2. International Covenant of Economic, Social and Cultural Rights 1976:

Article 13(1) of the Covenant provides that the State parties recognize the right to everyone to education.

Article 13(2) recognizes that with the view to achieving full realization of the right to education, primary education shall be made compulsory and available free for all .

#### 3. Convention on Rights of Child 1989

Article 28(1) of the Convention enjoins the State parties to make primary education free and compulsory for all and take measures to encourage regular attendance at schools and the reduction of dropout rates.

Article 29 specifies that the education of the child shall be directed to the development of mental and physical abilities and overall all round development.

India has ratified the Convention on 11 December 1992.

Now the Right to education is a Fundamental right under the Indian Contitution under Article 21-A.

(The context of the literature review has been taken from the sources which have been mentioned in the refernces for further study.)

##### A. Right to Education.

Article 21-A of the constitution states that “right to education-the state shall provide free and compulsory education to all children of the age of six

to fourteen years in such a manner as the state may, by law determine.”

The Supreme Court is its liberal interpretation of life and liberty as under Article 21 held that the term liberty not only includes liberty but all includes livelihood but also the right of human beings to live with dignity and that also includes the right to education, and therefore, right to education is a fundamental right under the constitution.

#### **Article-45 provision for early childhood care and education to children below the age of six years-**

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

The article has been substituted by the Constitution (eighty-sixth amendments) Act, 2002 which received assent of the President on Dec. 12, 2002.

By this amendment a new Article 21-A providing for right to education has also been inserted.

This is now also a fundamental duty of parents and guardians to educate such children as provided in Clause (K) of Article 51-A.

Article 45 states the “provision for free and compulsory education for children the State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, for free and complete the age of fourteen years.

It was held in the case of Mohini Jain v. State of Karnataka and other,

The directive principles which are fundamental in the governance of the country cannot be isolated from the fundamental rights guaranteed under Part III.

These principles have to be read into the fundamental rights.

Both are supplementary to each other.

The state is under the constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III could be enjoyed by all.

Without making “right to education” under Art. 41 of the constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate.

“**Right to life**” is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life.

It extends to the full range of conduct which the individual is free to pursue.

The right to education flows directly from right to life.

#### A) Rights against exploitation

Article 23 states that “prohibition of traffic in human beings and forced labour:-

- 1 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.
- 2 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 any of them.

Traffic in human beings means to deal in men and women like goods, such as or to sell or let or otherwise dispose them off.

It would include traffic in women and children for immoral or other purposes.

The immoral traffic (prevention) act, 1956 is a law made by parliament under Article 35 of the constitution for the purpose of punishing acts which result in traffic in human beings.

In pursuance of Article 23 the bonded labour system has also been abolished and declared illegal by the bonded labour system (abolition) act, 1976. To ask a person to work against his will and not provide him remuneration can be a breach under Article 23 of the Constitution. In no circumstances can a man be required to work against its will.

The Indian Penal Code and the Criminal Procedure Code have separate provisions prohibiting traffic in human beings.

According to the penal code, selling, letting for hire or otherwise disposing of, or buying, or hiring or otherwise obtaining possession of any girl under the age of 18 years for the purpose of prostitution or for any unlawful or immoral purposes is also an offence.

Article 24 “prohibition of employment of children in factories etc.

No child below the age of fourteen years shall be employed to work in any factory or mine or be engaged in any hazardous employment.”

#### B) Child labour

Article 23 and 24 of the constitution determine the term “child labour”. The Child Labour (Prohibition and Regulation) Act, 1986;

This Act was enacted on 23<sup>rd</sup> December 1986 by the parliament and was enforced on 26<sup>th</sup> May, 1993 by the Central Government.

The object of the act is:

- (i) Ban on the employment of children i.e., those who haven't completed their fourteenth year, in specified occupations;
- (ii) Lay down a procedure to decide modifications to the schedule of banned occupation and processes;
- (iii) Regulate the conditions of work of children in employment where they are not prohibited from working;
- (iv) Lay down enhanced penalties for employment of children in violation of the provisions of this act, and other acts which forbid the employment of the children;
- (v) To obtain uniformity in the definition of “child” in the related laws.

The intention of this act was to ban the engagements of child labour in certain employments and to regulate in areas where it has not been prohibited. It provides power to the government to make rules with reference to health and safety wherever the employments of children are permitted. Night work for children is prohibited. The hours of work for the children are also to be considered by the state and the central governments.

The act enables the governments to appoint inspectors to enforce the provisions of the act and it has also provided stringent penalties including imprisonment for violations of the provisions of the act.

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Any occupation which may be connected with transport of passenger, goods and mails, cinder packing, construction of railways, selling of fire crackers etc..... may be included as child labour activities.

Process may include bidi-making, carpet weaving, cement manufacture, cloth printing, weaving, dyeing, manufacture of matches, explosives etc. will fall under the category of child labour.

### 6. Policies of the government regarding children

The Government of India has made number of policies regarding the physical, mental & social development of the children of the country. The Government has also made many policies on the health & education of the children. The following are some of the important policies of the Government regarding children:

- ⌘ National Policy for Children, 1974
- ⌘ National Policy on Education, 1986

⌘ National Policy on Child Labour, 1987 · National Health Policy, 2002

#### A) National policy for children 1974

India is one of the few countries in the world to have a written policy for children. This policy declares that the children are the 'supreme asset of the nation'. The following are some of the featured of the policy:

1. All the children shall be covered under a comprehensive health programme.
2. Programmes to be implemented to provide nutrition to children & remove deficiency from the diet of the children.
3. To provide non-formal education.
4. Special attention to be taken towards the physically challenged, mentally retarded children.
5. All children shall be ensured quality of opportunity.

#### B) National policy on education 1986

This was second policy on education; the first policy of 1968 was revised by this policy. The policy was regarded as a landmark one. This policy gave highest importance on the Universal Primary Education. It also gave importance to early child hood care & education. It gave emphasis on the need of large-scale investment on the development of children both through Government & through voluntary organisation. Later on a number programmes were undertaken throughout the country like the Operation Black Board. Sarva Siksha Abhiyan etc. the Operation Black Board & Sarva Siksha Abhiyan became very popular all over the country.

#### C. National policy on child labour 1987

The National Policy on Child is a landmarked endeavour in the progressive elimination of child labour in India. The policy encompasses actions in the field of education, health, nutrition, integrated child development & employment. The National Policy on Child Labour is set under the following three heads:

- ⌘ The Legislative Plan
- ⌘ Focusing of general programmes for benefiting child labour wherever possible
- ⌘ Project-based plan of action in areas of high concentration of child labour engaged in wage/quasi-wage employment.

#### D. National health policy 2002

The first policy on health, 1983 aimed at achieving 'health for all by the year 2000'. The second policy on health, 2002 envisages giving priority to school health

problems which aimed at health education & regular health check-ups at schools. The principle feature of this policy was to prevent communicable diseases like HIV/AIDS & to provide for universal immunization of children against all major preventable disease.

### 7. Judicial decisions

#### A. M.C. Mehta vs State of Tamil Nadu and Others

In this case, Indian activist plaintiff M.C. Mehta sued the State of Tamil Nadu to improve the working conditions for children and to provide children rescued from hazardous labour with an education. The Hon'ble Supreme Court issued landmark ruling that the Indian Constitution (Article 24) requires the State to endeavour to provide a free, compulsory education for children. The court found that children under the age of 14 could not be engaged in hazardous employment, and ordered the government to established and maintain a child labour rehabilitation welfare fund. Employers that violated child labour laws would be required to make a deposit into the fund; the government would also be required to offer the parent of each child engaged in employment a job, or else make a deposit into the fund.<sup>1</sup>

#### B. Bandhua Mukti Morcha VS Union of India and Others

In this case, the Supreme Court held "Therefore, whenever it is shown that the labourer is made to provide forced labour, the court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour. This presumption may be rebutted by the employer and also by the State Government if it is so chooses but unless and until satisfactory materials is provided for rebutting this presumptions, the court must proceed on the basis that the labourer is a bonded labourer entitled to the benefit of provisions of the act. The State Government cannot be permitted to repudiate its obligation to identify, release and rehabilitate the bonded labourers on the plea that though the concerned labourers may by providing forced labour, the State Government does not owe any obligation to them unless and until they show in an appropriate legal proceeding conducted according to the rules of adversary system of justice, that they are bonded labourers.

The Court further held that the right to live with human dignity , free from exploitation enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses(e)

and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women and the children of tender age against abuse, opportunities and facilities for the children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

These are the minimum requirements which must exist in order to enable a person to live with human dignity and neither the Central nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials<sup>2</sup>.

C. J.P. Unnikrishnan and others vs State of Andhra Pradesh and others

In this case, the Supreme Court held that citizens of this country have the fundamental right to education and the said right flows from Article 21 of the Constitution. This right is, however, not an absolute right. Every child/children of this country has the right to free education until he completes the age of fourteen years. Therefore, his right to education is subjected to limits of the economic capacity and development of the State.<sup>3</sup>

D. Mohini Jain vs State of Karnataka

In this case, the Supreme Court was called upon to deal with the question of right to education under Article 41 and once again the court emphasized the importance of Directive Principles by holding that the right to education is concomitant of the Fundamental Rights and made the following observations:

“The directive principles which are fundamental in the government of country cannot be isolated from fundamental rights guaranteed under Part III. These principles have to be sent into the Fundamental Rights. Both are supplementary to each other. The State is under a constitutional mandate to each other. The state is under a constitutional mandate to create conditions in which the fundamental rights guaranteed to the individuals under Part III can be enjoyed by all. Without making “Right to education” under Article 41 of the Constitution a reality, the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The fundamental rights guaranteed under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen has education and is conscious of his individualistic dignity.<sup>4</sup>

## 8. Suggestions

After reviewing the literature the paper has come to a conclusion with a suggestion that the policy makers should come out with certain legislations to enrich the mind of the children of this country where every child can go to school instead of doing labour. Where the child should get dignity by abolishing child trafficking and giving them freedom from slavery. Where the child should not beg for money but should beg for a pen. A child should get proper nourishment and get a better health care.

Policies of the government should not remain in papers but should come out as effective legislations.

The growth of the nation is in the hands of the children who are future of the nation. A nation will grow when a child will nourish from within. Every child is expected to have a strong mind, body, and soul.

The future lies in the younger generation. Today's India is a young India. So policy makers will have to take care of this young generation as soon as they have taken birth. Healthy mind makes a healthy Nation.

## 9. Conclusion

As justice Bhagwati has rightly quoted “the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into the maturity, into fullness on physical and vital energy and most breadth depth and height of its emotional, intellectual and spiritual being”. Children require guidance and support. They do not know the technicalities of life. It is for citizens like us to take their hand and show them the right way. The social workers play an important role in eradicating social evils and thus there is need for stricter analysis on their qualification and professional capacity.

Although there is much legislation by the government to curb many social evils against children, the governments are not taking any enough steps to ensure that children, the future citizens of our country are protected. These are the children that would lead our country to a healthy and prosperous nation. The final affirmation on child rights is possible only if there is international cooperation and implementation of the right to development.

The national policy for children, 1974 declared that the children are the ‘supreme asset of the nation’. Children are the future of the nation. No civilized country can ever develop without proper health & educational development of their children. The

Government must divert its policies towards the development of children. All Policies of the Government must contain provisions relating to children. The Constitution of India aimed at making India a

Welfare State & for achieving it the development of the children of our nation is essential.

As quoted by Mahatma Gandhi- “ Be the change you wish to see in the world”.

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<sup>ii</sup> Bandhua Mukti Morcha vs Union of India, (1991) 4 SCC pg. 177

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