

Role Of Human Rights For The Protection Of Child Health

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Abstract:

The children are the citizens of future era. Childhood is both the most vulnerable and the most formative period of life. Children need protection, support and encouragement and a safe and peaceful environment; areas of violent conflict, social unrest, high criminality or alienation cannot provide all these. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. Children are at risk of human rights violations because of their vulnerability in society. Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is favourable to his social and physical health is assured to him. Throughout the world, millions of children have their rights compromised by poverty, malnutrition, armed conflict and humanitarian crises. The violation of the rights of children, such as a lack of access to education, safe shelter and health care, is not only a problem of 'other poorer countries'. The Convention on the Rights of the Child (CRC), a United Nations (UN) treaty acknowledges that addressing children's human rights requires special attention. The near-universal ratification of the convention reflects a global commitment to the principles of children's rights. By ratifying the convention, governments state their intention to put this commitment into practice. The Constitution of India, in a number of articles has spelled out the rights of children. While framing the Constitution, framers were very much influenced by the concept of Human Rights. It may be coincidence that the Indian Constitution was drafted almost at the same time as the Universal Declaration of Human Rights was adopted. Despite the existence of rights of children, it suffer from poverty, homelessness, abuse, neglect, preventable diseases and unequal access to health, education, and justice system that do not recognize their special needs. Therefore, the State parties are obligated to amend and create laws and policies to fully implement the convention; they must consider all actions taken in light of the best interests of the child.

Key words: Human Rights, Child, Vulnerable, Protection,

Introduction

The child that is hungry must be fed, the child that is sick must be helped, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succoured¹

Human rights are those rights which a person has simply because he or she is a human being. For the proper development of a human being, some rights are essential. These rights belong to them because of their very existence and became operative on their birth. Human rights provide legal mandate to fulfil human needs. Human rights are traditionally known as ‘natural rights’ and can be said to have originated from the divine law of nature. The idea of human rights is used to affirm that individuals have moral rights by the very fact of being human which no society or state should deny.²

One definition for human rights is those basic standards without which people cannot live in dignity. To violate someone’s human rights is to treat that person as though she or he were not a human being. Human rights are held by all persons equally, universally and forever. Human rights are inalienable, indivisible and interdependent.³ In claiming our human rights, we also accept the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied. They being human beings do possess human rights and fundamental freedoms. There are certain group of human beings which either by nature or because of deep-rooted custom are weak and vulnerable, such as, a child, women, disabled persons, aged persons, migrant workers or persons belonging to a particular race. In the case of children, adults are required to take responsibility in order to ensure that children’s rights are protected.

Children, Citizen of Future, Supreme National Asset

Children are no doubt supreme asset of the country. They have to be groomed and looked after appropriately, not only on the basis of constitutional or statutory provisions, but also with great human touch and concern. In one of its judgement the Supreme Court rightly observed the children are the citizens of future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country.

Gabriel Mistral, the Nobel Laureate said, “We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot; right now is the time, his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer.

The first Prime Minister of India, Sri Jawaharlal Nehru’s birthday – 14th November is celebrated every year as Children’s day. This shows that how much importance he attached to the children.

The Supreme Court in Roy Jacob Vs. A Chakramakkal, observed that “children are not mere chattels, nor are they mere plaything, for their parents. Absolute right of parents

¹(EglantyneJebb/International Save the Children Union, Declaration on the Rights of the Child—Adopted by the League of Nations as the Declaration of Geneva, in 1924).

²(Dr. M. Asad Malik, “right to legal aid in human rights perspective – a judicial response”, vol XL (3) Indian Bar Review, 2013, p. 77.)

³(Shanti Raman, Susan Woolfenden, Katrina Williams and Karen Zwi, “Human rights and child health” Journal of Paediatrics and Child Health, Volume 43, Issue 9, pages 581–586, September 2007)

over the destinies and lives of their children has in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society.

Every child, therefore, has a claim and is entitled to its share in the finances of the Republic for harmonious and comprehensive development of its personality.⁴

Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Neglecting the children means loss to the society as a whole. The founding fathers of the constitution, therefore, have bestowed the importance of the role of the child in its best for development.⁵

WHAT IS RIGHT TO HEALTH?

The right to health is an inclusive right. We frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, calls these the "underlying determinants of health". They include:

- Ø Safe drinking water and adequate sanitation;
- Ø Safe food;
- Ø Adequate nutrition and housing;
- Ø Healthy working and environmental conditions;
- Ø Health-related education and information;⁶

Children deserve a particular attention

The period of childhood is a phase in which the human being is more vulnerable because they have not finished developing physically or mentally. Furthermore, the child requires a particular attention and protection.

To protect children, the principle of the superior interest of children applies. This principle involves two important rules:

- All the decisions regarding children have to be taken in the exclusive interest of each child to ensure their immediate and future well - being.
- All the decisions and acts must imperatively guarantee the child rights. The superior interest of children is subordinated to a protection of the child.

The superior interest of the child targets the well - being of each child. The principle of the superior interest of the child has the goal of promoting and guaranteeing the well - being of all children, on several aspects:

- Physical well - being: ensuring good health and proper development of the child.
- Mental well - being: providing the child the opportunity to develop intellectually.

⁴Dr. Janak Raj Jai, "Protection of Rights of a Child in the National Development", Vol. XXXIX (1), Indian Bar Review, 2012, p. 70-71.

⁵Bandhua Mukti Morcha Vs. Union of India, (1997) 10 SCC 549.

⁶The Right to Health, Office of the United Nations High Commissioner for Human Rights, World Health Organization, <http://www.ohchr.org/Documents/Publications/Factsheet31.pdf>.

- Social well - being: ensuring to the child the opportunity to flourish socially and spiritually.⁷

Throughout the world, millions of children have their rights compromised by poverty, malnutrition, armed conflict and humanitarian crises. The violation of the rights of children, such as a lack of access to education, safe shelter and health care, is not only a problem of 'other poorer countries', but our country also faces the same.

Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. Neglecting the children means loss to the society as a whole. The founding fathers of the constitution, therefore, have bestowed the importance of the role of the child in its best for development.⁸

Role of Human Rights for the Protection of Child Health

Health protection under International Law

The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". The preamble further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

The 1948 Universal Declaration of Human Rights also mentioned health as part of the right to an adequate standard of living (art. 25). The 1948 Universal Declaration of Human Rights is a cornerstone document for the recognition and advancement of human rights, including those of children. The Universal Declaration of Human Rights starts with the golden line "all human beings are born free and equal in dignity and rights". Human rights are seen as 'inherent, inalienable and universal rights' basic to a human being for the reason of his/her being born as a human being. The Declaration upholds that childhood is entitled to special care and assistance.

The right to health was again recognized as a human right in the 1966 International Covenant on Economic, Social and Cultural Rights. Since then, other international human rights treaties have recognized or referred to the right to health or to elements of it, such as the right to medical care. The right to health is relevant to all States: every State has ratified at least one international human rights treaty recognizing the right to health. Moreover, States have committed themselves to protecting this right through international declarations, domestic legislation and policies, and at international conferences.

One of the first international attempts to improve the health of children was by Ms. Eglantyne Jebb, a founder of Save the Children, during the aftermath of the World War I. She drafted the Geneva Declaration of the Rights of the Child, the first international children's rights document adopted by the League of Nations in 1924, which was same adopted by the United Nations in 1946. Today, in the Convention on the Rights of the

⁷"Right to protection - Understanding Children's Right to Protection", Humanium, <http://www.humanium.org/en/fundamental-rights/protection/>, dated 30.03.2017

⁸(Bandhua Mukti Morcha Vs. Union of India, (1997) 10 SCC 549.)

Child (1989) we have a more comprehensive and near universal legal instrument for children's rights.⁹

The Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child (CRC) was adopted on November 20, 1989. It legally entered into force on September 2, 1990, in accordance with Article 49.

The preamble to the CRC states:

"The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10), and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children".

The Convention on the Rights of the Child is a legally binding international apparatus that addresses civil, political, social, economic, and cultural rights. To date, it has been ratified by 199 countries. With respect to child rights and human security, there are specific and notable provisions:

Article 6:

1. States' parties recognize that every child has an inherent right to life.
2. States' parties shall ensure, to the maximum extent possible, the survival and development of the child.

Article 24:

1. States' parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States' parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States' parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
 - (a) to diminish infant and child mortality;
 - (b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
 - (c) to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious food and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
 - (d) to ensure appropriate pre-natal and post-natal health care for mothers;
 - (e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene, and environmental sanitation and the prevention of accidents;

⁹(NorieNogami, "Children's Health and Human Rights", REVIEW DIGEST: HUMAN RIGHTS & HEALTH, <http://www.du.edu/korbel/hrhw/researchdigest/health/children.pdf>)

(f) to develop preventative health care, guidance for parents, and family planning education and services.

3. States' parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States' parties undertake to promote and encourage international cooperation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Articles 6 and 24 of the CRC encompass a range of rights that address the critical issue of water sufficiency and access for children. Child development, environmental sanitation, and preventative health care, to cite just a few areas of concern, are wholly dependent upon a clean source of water and effective sanitation systems.¹⁰

Health protection under Indian Constitution

Right to Health is not included as an explicit fundamental right in the Indian Constitution. Most provisions related to health are in Part-IV (Directive Principles).

These are:

Article 38 says that the state will secure a social order for the promotion of welfare of the people. Providing affordable healthcare is one of the ways to promote welfare.

Article 39(e) calls the state to make sure that health and strength of workers, men and women, and the tender age of children are not abused.

Article 41 imposes duty on state to provide public assistance in cases of unemployment, old age, sickness and disablement etc.

Article 42 makes provision to protect the health of infant and mother by maternity benefit.

Article 47 make it duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. Further, State's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health.

Article 48A ensures that State shall Endeavour to protect and impose the pollution free environment for good health.

Apart from DPSP, some other provisions related to health fall in 11th schedule and 12th schedule as subjects of Panchayats and Municipalities respectively. These include drinking water, health and sanitation, family welfare, women and child development, social welfare etc. The above description makes it clear that most provisions related to health fall in DPSP in the constitution. They are non-justifiable and no person can claim for non-fulfilling of these directives. However, Judiciary has widely interpreted the scope of Right to Health under Article 21 (right to life) and has thus established right to health as an implied fundamental right. Not only article 21 but also other articles under Part-III have been linked to Right to Health. For example, Article 23(1) prohibits traffic in human beings. Since trafficking of women leads to prostitution, which in turn is to major factor in spread of AIDS, this article has been linked to Right to Health. Similarly, Article 24 says that 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. It is directly related to Child health.¹¹

¹⁰Ross Pink, "Child rights, water rights and human security", Vol. 14, No. 1, Health and Human Rights, (June 2012), p. 82-83.

¹¹<http://www.gktoday.in/blog/right-to-health-in-the-constitution-of-india/>

Protection of the child- a human rights mandate.

Childhood is both the most vulnerable and the most formative period of life. Children need protection, support and encouragement and a safe and peaceful environment; areas of violent conflict, social unrest, high criminality or alienation cannot provide all these. The Convention on the Rights of child, 1989 clearly indicates this aspect. The Convention which India ratified in 1992 guarantees the freedom from non-discrimination, upholds the best interests of the child, right to life, survival and development, right to protection, right to be heard and to participate, right to health care, and the right to education which makes all other rights realizable and meaningful. The Convention recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. State parties are mandated to take appropriate measures to assist parents and others responsible for the child to implement the above right and are directed to provide material assistance and support programmes particularly with regard to nutrition, clothing and housing.¹²

Conclusion

It can be concluded that the protection of fundamental human rights is of cardinal importance. There is no better religion than protection of human rights of human beings by human beings and there is no better service to mankind than respecting the human rights of human beings”.

Well in the formative years of his life, he must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.

The violation of the rights of the children of tender age has become a very disturbing factor for their proper growth, welfare and protection. The child rights therefore need a well-defined, child friendly national movement at the national level.

Kamala Devi Chattopadhyay rightly observed, “There is no greater waste in life either in magnitude or intensity than the colossal waste of human talent that goes on for want of educative stimulant scientific training and congenial modes of expression.” We should remember and remind ourselves that it is only the strong, knowledgeable and virtuous children who can make the country strong and great.

¹²(Anuja.S, “Human Rights of Street Children to safe and Healthy Childhood –the Approach and Challenges”, Vol. XL (4), Indian Bar Review, 2013, p. 118-119.