



Human Rights Vis-À-Vis Children Rights

KEYWORDS

Constitutional Law, Children's Rights, Social Justice and Labor Law etc.

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ABSTRACT *Human rights are fundamental rights of people. These rights belong to each person; man, woman and child. They are the right to life, liberty including all the political, civil, social, economic and cultural rights necessary for the people. Human rights are those requirements that allow us to develop to the fullest extent and satisfy our basic human needs.*

This article is based on review method of research. During research work, I have realized some problems of the world's children such as child abuse, child exploitation, child labor etc. I have also realized that major factor of child labor are poverty, illiteracy, large family size, death of the father etc. Further, Child labor in the world is a vast challenge due to lack of societal awareness and political will. Indeed, the parents have no time to spend for his children from which children are moving towards criminal offences. UK government are proper responsible to implement UN convention on the rights of children. India's legal obligation is better but implementation is very poor.

While exploring the research work, I have used many statutes, legislations and enactments like the Constitution of India as well as another countries, United Nations Convention on the Rights of Children, Law Commission reports which is the secondary sources referred herein are treaties, commentaries, text books, case comment, law journal, various committee reports and case reports. As a modern source websites have also been used to.

Therefore, I have suggested that legislation is not total solution of exploitation of children but it should be strict implementation by government bodies, NGOs, Social agency.

Introduction:-

According to Article-1 of United Nations Universal Declaration of Human Rights, 1948, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." (Hamilton, 2002) Human being is meant to include the adult and child, men and women, urban and rural etc. Justice and dignity is a living concept of human rights by which every section of the society gets equal justice and proper dignity. This is the principal concept of Human Rights and Constitutional Rights. Everyone has the right to life, liberty and security of person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the rights to freedom of thought, conscience and religion, these rights includes freedom to change his religions or belief and freedom, with either alone or in community others and in public or private, manifest his religion or belief in teaching, practice and worship and observance. (Hamilton, 2002). In term "Everyone" which means all person e.i. child and adult. The standard of equality that states everyone is created equal at birth is called Ontological Equality. (Wilbourn, 1987)

The Preamble of the Constitution had knowledge about this defect that prevails in the Social Justice that is why they have adopted this Principle of Social, Economic and Political Justice in the Constitution of India. Economic and Political Justice are also part of Social Justice. Without the social development of the country, it is not possible to develop the country as a whole. Initially, basic concept of social justice was to provide, food, clothes and shelter to every one of the society. Pt. Jawaharlal Nehru (Parliament of India, 1949), First Prime Minister of India raised the arguments in the Constituent Assembly which given emphasizes that meaning of freedom would only be fruitful, when every citizen of the country could cloth and shelter. Normally, Social Justice implies that it is to provide justice to

Scheduled Caste, Tribal and Backward Classes of the society where as now Social Justice is related to provide Justice to weaker section of the society. Weaker section of the society also includes women and children. To achieve this goal the Constitution of India under Article 15 (3) provided provision for make in special laws to provide Social Justice to women and children. (Seervai, 1996)

Concept of Social Justice had played a great role in strengthening the right of children and women. Whenever, law is enacted for protecting rights of women and children, it is essential to keep and view the provisions of Social Justice. (Crudden, 2008)

According to Austinian Politics and Plato, Justice is a right and right is part of social security. (Verma, 2005) According to American Social Jurist John Rawls, concept of Social Justice treats dignity of person important. (Rawls, 2001) Researcher divided society into four classes as follow-

i. Richest

ii. Rich

iii. Poor

iv. Poorest

The richest and rich do not require protection of Social Justice. The poor have been divided into four categories as under-

i. Richest poor

ii. Rich poor

iii. Poor of poor

iv. Poorest of poor

The richest poor and rich poor comprise upper middle class of the society. Richest and rich may get or may not get benefit of Social Justice according to their requirements. Thus only poor of poor and poorest of poor need the protection of Social Justice.

If Researcher's theory is applied to Indian society, the poor of poor and poorest of poor are lower middle class and marginal people respectively. Poorest are have not of the society, i.e. landless, daily wage workers etc.

Thought of Indian Jurists regarding the Social Justice, Human Rights and Children's Rights:-

Dr. R. K. Narayan, then Vice-President of India in his speech on the occasion of the Annual Function of the University of Jamia Miliya Islamia, Delhi told that for maintaining country as a democratic republican country, it is necessary to secure freedom of speech and provide economic, political and social justice and equal right to everyone includes women and children. (Narayan)

While addressing the joint conclave of the Chief Minister and Chief Justices of High Courts, the Chief Justice of India K.G. Balakrishnan on 08th February, 2007 said that our Constitution framers had given the highest place to justice. Justice is above all other principles such as fraternity, equality and freedom. Justice includes social justice. Social Justice is superior to economic and political justice. (Balakrishnan, 2007)

Writ petition cannot be broad before Supreme Court for violation of economic and political rights under Directive Principle of State Policy stated in the Article 37 of the Constitution of India but writ petition can be broad before the Supreme Court for violation of Social Justice under Article 32 of the Constitution of India. (Gidney Club v. Union Of India, 1978)

The Freedom of judiciary is an essential part of rule of law. Rule of law should be biased on Justice. On the Valedictory Session of the Civil Service Day, the Chief Justice K. G. Balakrishna said that the Directive Principle of State Policy had been incorporated to promote the welfare of the citizen of the country. Welfare state includes health, security, personal interest, education, and family welfare, empowerment of the women and protection of the rights of children and welfare of the society. (K.G. Balakrishnan, 2009)

This goal can be achieve through implementation of the Social Justice. K.G. Balakrishnan, CJI, while addressing the lecture series in Brazilian Supreme Court on 15th August, 2008 said that continued judicial intervention is part of positive action for Social Justice. (K.G. BALAKRISHNAN, 2008)

There exists another concept of justice beyond the sphere of the Social Justice. On one side there is a conflict among some Fundamental Rights as well as Human Rights, and other side the goal of Social Justice is to be achieved. This implies that both Fundamental Rights as well as Human Rights and Directive Principle of State Policy should be protected and promoted the rights of women and children. Only judiciary can remove this conflict.

The Chief Justice of Supreme Court of India, Y.K. Sabharwal, CJI spoke in National Legal Service Authority that "All the statute coming under Social Justice should incorpo-

rate provision for free legal aid through the legal service authority, for example; under mental health, SC, STs Act, Domestic Violence Act, Juvenile Justice Act, POCSO Act, it is necessary to provide free legal aid. He said that the District Legal Services Authorities in the country have been empowered to collect petitions from children facing human rights violation and forward them directly to the Supreme Court, S. Vimala, Principal District and Sessions Judge and Chairman, District Legal Services Authority. (Times of India, 15th November, 2005)

Some Issues:-

India is determined to achieve the goal of Social Justice including empowerment of women and promotion of right of children. Our responsibility is to protect the rights of the weaker and deprive section of the society and also sanctity of three organs of governments. Today, burning issue of society are social discrimination, exploitation, human trafficking, welfare of women and children, welfare of SC/STs, improvement of water resources, reform of jail, health of common people, problem of HIV AIDS. These are worldwide problem which is the violation of Human Rights.

It is necessary to give emphasize to this vital issues, responsibility of National Legal Service Authority has increased many fold to contribute to the cause of providing Human Rights as well as Social Justice. Demarcation of the population into BPL and APL is not the solution but economic justice is the demand of time.

Human beings have progress a lot. There is no scarcity of resources. Availability and Protection of all kinds' material have been increased, yet hunger, scarcity, helplessness, exploitation, abuse and corruption are increasing in the world.

Children's Rights:-

In the famous case of Lakshmi Kant Pandey v. Union of India, (Lakshmi Kant Pandey v. Union of India, 1991) the Supreme Court of India emphasized that "It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a "supremely important national asset" and the future well being of the nation depends on how its children grow and develop.

Children might profit by all the human rights ensure accessible to grown-ups. (UNUDHR, 1948) In all activities concerning children, the best interests of the child might be an essential thought. (UNCRC, 1989)

States will regard every child rights without separation of any sort, independent of the children or his or her guardian's or lawful gatekeeper's race, shading, sex, dialect, religion, political or other assessment, national, ethnic or social inception, property, handicap, birth or different status and will take measures to guarantee that all kids are ensured against all types of segregation. A sexual orientation touchy approach ought to be taken in all intercessions. (UNCRC,1989)

The Beijing Rules are an arrangement of standards and rules for the best possible organization of adolescent equity and incorporates rules and analysis on equity for youngsters issues, for example, adolescent courts, the period of criminal obligation, the indictment of juveniles, sentencing and norms for adolescents if detained. (Rules, 1985)

Crime against Children:-

The children in India require double sided protection. At the one hand they need to be provided with the basic necessities for their overall development making them physically strong, mentally alert, academically brilliant by affording them, irrespective of their sex, family atmosphere for proper growing and grooming of the child. The other side requires prevention and treatment of a child who is termed to be a delinquent.

Increasing urbanization has led to a rise in the disease burden in children as well as crime against them. While there was a 24% increase in crimes against children between 2010 and 2011, it has risen by 52.5% from 2012 to 2013, shows a latest report by Save the Children. Similarly, urbanization has led to many other problems in children including health issues like under nutrition, stunting and even high infant mortality rate. "A higher-than-average crime rate clearly means that children in the cities are not only victims to such violence but are in danger of becoming a part of organized crime rackets, especially when faced with circumstances such as disruption in schooling, dysfunctional family, lack of parental care and exposure to substance abuse," the report said, highlighting the role of cities in increasing urban crime. According to the report, major crimes against children include trafficking, kidnapping, rape and infanticide, while the girl child is affected the most due to the proliferation of sex work in cities. In 2012, Bengaluru tops the list of 88 cities across the country with 551 cases of crime against children, Mumbai stands second with 570 and Delhi comes third with 363 cases, the report said citing NCRB data. (Times of India, 2015)

According to NCRB, Ministry of Home Affairs, Government of India, according to 2011 figures, the state recorded 1,782 cases of crimes against children. The states that rank above Chhattisgarh are UP (5,500), MP(4,383), Maharashtra (3,362), Bihar (2,233) and Andhra Pradesh (2,213).

The crime rate (ratio of number of crimes against children to population) is highest in Delhi (25.4), followed by Andaman & Nicobar Islands (20.3), Chhattisgarh and Chandigarh (7), Madhya Pradesh (6) and Goa (5.1). According to national figures, the average charge-sheet filing rate for all the crimes against children was 82.5% in 2011. (NCRB, 2011)

In 1986 children Act, the age of delinquent children was below 16 years for boys and below 18 years of girls. In the Act of 2000, the age of delinquent children was 18 years for both the sexes. In the Juvenile Justice Act, 2015, the age of juvenile was fixed as 18 years for both sexes, however, for heinous crimes, the ages is fix as 16 years for juveniles. (Lok Sabha, 2015)

Examinations of Research:-

Sexual violence against children is a gross violation of children's rights. Yet it is a national reality across all states and social groups. It can take the form of sexual abuse, harassment, rape or sexual exploitation in prostitution or pornography. It can happen in homes, institutions, schools, workplaces, in travel and tourism facilities, within communities. Evidence shows that sexual violence can have serious short- and long-term physical, psychological and social consequences not only for girls or boys, but also for their families and communities. This includes increased risks for illness, unwanted pregnancy, psychological distress, stigma, discrimination and difficulties at school.

It has been stated there are gross violation of child rights under Human Rights. They are subjected to exploitation especially, subjected to sexual assault including rape, trafficking of sexual exploitation and prostitution and pornography. This is not a phenomenon existing in particular country but spread all over the world.

The study examined emotional abuse and girl child neglect. The study examined two forms of emotional abuse: humiliation and comparison. Half the children reported facing emotional abuse with 83% of that abuse begin conducted by parents. Girl child neglect was assessed girls comparing themselves to their brothers on factors like attention, food, recreation time, household work, taking care of siblings, etc. 70.57% of girls reported having been neglected by family members. 48.4% of girls wished they were boys. 27.33% of girls reported getting less food than their brothers. Of the young adults (ages 18-24) interviewed, almost half of them reported having been physically or sexually abused as children.

W.H.O. estimates that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. A Global School-Based Student Health Survey found that 20% and 65% of school going children reported having been verbally and physically bullied in the last 30 days. ILO estimates show there were 218 million child labourers in 2004, out of which 126 million were engaged in hazardous work. UNICEF estimated 3 million girls and women in sub-Saharan Africa, Egypt and Sudan are subjected to female genital mutilation every year.

There is a major abuse of power in police station in terms of recording F.I.R. The evidentiary value of FIR is greater than any other statement recorded by the police during the course of the investigation. Section 154 requires FIR to be recorded in verbatim in the very language of the informant, signed and has to read over.

Medical examination is a climacteric. Most of the cases this has a lot of weightage according to analysis by researcher it was inferred that major or most of the police official give prime importance to medical examination. On being asked about this there is a need to record the victims clothes immediately after the incident as at times Hospitals may vanish the evidence.

The new POCSO Act is not completely victim oriented although it emphasizes more on child psychology but there is a need for separate victim based law in India. Most of the rape cases go unreported in India, there is a need to reduce impunity that is prevailing the most in the present scenario.

Another loophole is no presence of child psychologist during the time of recording of sentence, there is a counselor from an NGO but according to the researcher this is not sufficient as the qualification of the counselor from an NGO sufficient to understand the child's position. There mere presence of lady constable might also not make the victim comfortable and there must be a repeated phone counseling through phone or my a physiologists also so that during the course of case the child can open up about the incident and also provide crucial information regarding the incident as a child may not even understand about the incident as to what is happening to her during the course. There is a dire need of sex education in

school and there is even a need for gender education in Indian curriculum and this may help to an extent to curb the problem of child rape.

The investigation procedure in Child Rape cases is slightly different with respect to other Rape cases.

The POCSO Act, 2012 is effective in both pre-trial and the trial procedure by providing protection to the victim and saving them from re-victimization. In the investigation of such cases, the victim's testimony is of prominent importance, however due to the age of the victim the process of investigation in certain cases is affected.

Parents, relatives of the Victim, generally file the F.I.R. in such cases and in certain cases the informant is the Neighbor. The police officers are aware of the rights and duties prescribed especially for them under POCSO Act, 2012.

The Victim is traumatized; in the longer run she is quite affected. Though the Act aims at protecting her at trial, pre trial stages, provides compensation for her but nothing could be said about the effect of counseling they would receive and to what extent they would be able to live like others in general course.

Police face lot of difficulties from the side of the victim during the investigation majorly from the victims families and even the evidences are tampered at larger rate. Clear abuse of power by the police during the course of registering a FIR.

Suggestions:-

It is suggested that-

1. Right to children as per provisions of United Nations CRC should be provided to every children
2. Special care and attention should be given to children belonging to the weaker section of the society that put prevent them from juvenile delinquency.
3. Facilities should be created and provided so that every child of a every section of the society get proper and meaningful education.
4. Emphasis should be given to over all development of children by providing them facilities of game, amusement etc.
5. Economic Policy should be adopted to eradicate poverty from the country which would further reduce juvenile delinquency
6. Awareness campaign should be conducted to create an atmosphere against sexual offence against children and women.
7. All stockholders including State, parents, NGOs, Social Organization, Community Organization and Religious Organization should act collectively to minimize crime against children.
8. Scheme for reformation of convicted children should be adopted and implemented so that after expiry of their de-tention period they can live society with owner and means of livelihood.
9. There should be change in law so as to prevent all

forms of violence against children.

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