

## Children's Right to Health in India: Legal Perspective



### Law

**KEYWORDS :** Right to Health, Children, Malnutrition, Infant Mortality Rate, Health Policy.

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### ABSTRACT

*The question of right to health has emerged as one of the most vibrant issues for discussion in this new millennium. The question of children's right to health requires utmost attention as children are the future of the world. This paper is an attempt to analyze and understand the different aspects of children's right to health in the light of Indian government's various policies, programmes, legislation & judicial response in this direction. The health is an essential condition for the attainment of state of complete physical, mental & social well being and, therefore, is a fundamental right of every human being without distinction of any kind.*

#### Introduction:

The universal declaration of human rights adopted way back in 1948, proclaimed that childhood is entitled to special care and assistance. It was only during the twentieth century that the concept of children's rights emerged. Rights perspective is embodied in the United Nations convention on the rights of child in 1989, which is a landmark in international human rights legislation. Children being the most vulnerable section of the society need care, protection and affection for their survival and for all round development.

#### Child health and UN convention on the rights of the child:

The UN convention on the rights of the child held at New York in 1989 proclaimed in article 6 that every child has the inherent right to life and that the state parties should ensure to the maximum extent possible the survival and development of the child. Article 24 of the said convention directs states to ensure access to essential health services for the child and his or her family, including the advantages of breast feeding, pre and post natal care for mothers. Article 27 states that the state parties in case of need shall provide material assistance, particularly with regard to nutrition, clothing and housing. Similarly article 32 mandates the states parties to recognize the right of the child to be protective from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's all around health or social development. The Government of India has ratified this convention in December 1992, with the solitary rider in relation to article 32 of the convention. The Government of India undertook measures to progressively implement the provisions of Article 32 (Paul, 2008). According to article 1 of the United Nations convention on the rights of the child 1989, "a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". In India the age at which a person ceases to be a child varies in different laws (Shukla and Ali, 2008). In addition to the guarantee of fundamental right to life and personal liberty under article 21, the Indian Constitution also secures to every person including children's right against exploitation. Article 47 directs the state to raise the level of nutrition and the improvement of public health besides making efforts to stop consumption of intoxicating drinks and drugs which are injurious to health accept for medicinal purposes.

#### Children's health scenario in India:

Children in India suffer from various health problems since early childhood. The findings of the mid-decade review highlighted many aspects like progress on polio eradication which is not achieved as yet, role of oral rehydration therapy, and problem of malnutrition, discrimination against girl child, infant mortality rates (IMR), and vitamin A deficiency as public health problem.

#### Nutrition and child health:

There are 60 million underweight children under the age of five, and 67 percent of pre-school deaths are associated with malnutrition. In absolute number there are as many as 2.42 million malnutrition deaths under the age of five each year (Unicef,

2005; Sinha, 2006). The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992 regulates the production supply of infant milk substitutes, feeding bottles, and infant feeds with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant feeds and other incidental matters. In People's Union for Civil Liberties v. Union of India & Others (2001), (Writ petition (C) No. 196 of 2001, the apex court ordered the Central government to implement both revised nutritional and feeding norms as well as the financial norms of supplementary nutrition under the ICDS scheme.

#### Anemia and child health:

Among children between the ages of 6 months to 59 months, the great majority 70% are anemic. This includes 26% who are mildly anemic, 40% who are moderately anemic and 3% who suffer severe anemia. According to National Family Health Survey-3 (NFHS; 2005-06) 83.3% children in the age group of 6-35 months are found to be anemic.

#### Immunization and vaccination of children:

Immunization remains the single most feasible and cost-effective way of ensuring that all children enjoy their rights to survival and good health. According to NFHS-3 (2005-06), coverage of individual vaccines has increased considerably. Coverage of complete vaccination is 44% (12-23 Months of age).

#### Special health issues relating to children:

In 2009 thirty five million people are living with HIV/AIDS. Although HIV/AIDS has become a chronic, treatable illness in developed countries because of life saving drug cocktails or highly active antiretroviral therapy (ART), millions of people in the developing world still lack access to treatment (UNICEF, 2008). The only act prevalent so far to prevent sexual abuse of children and their trafficking in India is the Immoral Traffic (Prevention) Act 1956, which was amended in 1986, with the objective to curb trafficking in young persons both boys and girls.

#### Child paedophilia; an unholy nexus:

In 1995, the general assembly of world tourism organization, adopted its first resolution on the prevention of "organized sex tourism," wherein child sex tourism was denounced and condemned," considering it as violation of Article 34 of the convention on the rights of the child. In the significant Supreme Court judgment of Sakshi v. Union of India & Others, The court had highlighted the procedure of trial for the cases of child abuse and rape, appropriate legislation to this effect is needed urgently.

#### Children as victims of drugs:

Children, because of their tender age, are particularly prone to be swayed into addiction under unhealthy influences and to be used as an instrument in drug trafficking. The amended law makes it mandatory for the states to set up Juvenile Justice Boards and Protection homes at district levels. But states are dragging their feet on implementation of the Juvenile Justice (Care and Protection) Amendment Act, 2006.

**Children and disability:**

The National Policy on Education 1986 is implemented to achieve the goal of providing education to all including the disabled. In a historical Judgment in Gaurav Jain V. Union of India (1997), 16 (AIR 1997 SC 3021 (paras 24, 60) Justice K. Ramaswamy and Justice D.P. Wadhwa delivered this judgment) the court held that it is the duty of government and all voluntary non-governmental organizations to take necessary measure for protecting them from prostitution and to rehabilitate them so that they may lead a life with dignity of person.

**Child health care programmes:**

A number of childcare programmes for improving the health status of children are being implemented by the government of India from time to time such as: (i) Day care and crèche facilities (ii) The Reproductive and Child Health Programme (RCH) (iii) Integrated Child Development Service Scheme, (iv) National Charter for Children 2003 (v) National Plan of Action for Children, 2005; The health of child has been taken by the government as a serious issue under different policies i.e. National Population Policy (2000) and National Health Policy (2002) (vi) The Commissions for the Protection of Child Rights Act, 2005 (Act No. 4 of 2006).

Undoubtedly, there have been several provisions, programmes, policies dealing with health issues of children. Therefore it is necessary to create general awareness regarding child mortality and the importance of health care for children.

**Judicial response in India:**

The Constitution of India provides a protective umbrella for the rights of children. To ascertain the constructive role of the state in relation to children, in the landmark judgment of M.C. Mehta v. State of Tamil Nadu (1997), (24 AIR 1997 SC 699, the apex court held that children, below the age of 14 years cannot be employed in any hazardous industry or mines or other works. The description of hazard does not take into account other hazards which children are prone to, viz, mental, social spiritual and psychological hazards. Not only low remuneration or long hours of work but also these children are exposed to many occupational risks. The risks are countless in number in different sectors. To list a few, the table no 1 reveals the health hazards of child labour in organized sector.

The Hon'ble Supreme Court in Sheela Barse and another v. Union of India has declared that a child is a national asset. It is the duty of the state to look after the child with a view to ensuring full development of its personality. In pursuance of the constitutional directive of primary education the Parliament has now enacted, The Right of Children For Free and Compulsory Education Act 2009 which has come into force w.e.f. 1st April 2010. The Child Labour (Prohibition and Regulation) Act, 1986 has also made certain provisions regarding health and safety. Section 13 of the Act deals with the health and safety measures of the child employed in occupations or in processes.

**Conclusion:**

The World Health Organization's reports (2007) in which international health regulations which are issued from time to time act not only as a guiding framework for domestic policies, but also help in strengthening the link between human rights and health. The judiciary in India has attempted to establish the inter-relatedness between rights through the expression of the understanding of the 'protection of life and liberty' under Article 21 of the Constitution of India by adopting liberal, flexible approach in order to create harmony between Part III & Part IV of the Constitution of India. This has resulted in the recognition of the 'right to health' as a part of Article 21.

Unfortunately, the findings of the third National Family Health Survey (NFHS-3) put the political class to think seriously. The infant mortality rate is 47 (SRS, 2011), this is far away from the Millennium Development Goal (MDG) IMR of 30 to be achieved by 2015 (Ramachandran and Rajalakshmi 2009). Much of these deaths are preventable through childhood immunization. But the reach of the country's Universal Immunization Programme (UIP) continues to remain low, which is the result of a weak public health care system. India has one of the highest levels of child malnutrition in the world, higher than most countries in Sub

Sahara Africa. India is not currently close to achieve the goals set in relation to malnutrition and under nourishment in the UN millennium development goals (Gonsalves 2006).

**Suggestions and way forward:**

Overall, child health facilities are found to be grossly inadequate in India. Thus, for transforming the concept of child health as a 'Human Right' into reality and for overcoming the obstacles on its way to realization, following measures can be taken;

1. Each village should maintain a list of community midwives and trained birth attendants, primary school teachers and anganwadi workers who may be entrusted with various responsibilities in implementation of integrated service delivery (National Population Policy, 2000).
2. A holistic approach to children health which includes both nutrition and health services should be adopted and special attention should be given to the needs of women, and the girl at all stages of the life cycle.
3. Sex selection and abortion of the female fetus is big business among big players. The message needs to go out to the offending medical professionals and bureaucrats in charge for implementing the PNDT Act, that female feticide will be treated as the very serious crime and be effectively punished accordingly.
4. Nearly 100 million people live in urban slums with little or no access to potable water, sanitation facilities and health care services. This contributes to high infant and child mortality and primary health care needs to be provided.
5. It is necessary to embed universal coverage in wider social protection schemes related to health care and to complement it with specially designed, targeted forms of outreach to vulnerable and excluded groups of the society.
6. The mobilization of groups and communities to address what they consider to be their most important health problems and health related inequalities is a necessary complement to the more technocratic and top down approach to assessing social inequalities and determining priorities for action.
7. Our government should adopt, implement, and periodically review, health policies, strategies and plans of action, on the basis of epidemiological, sociological and environmental evidence, addressing the health concern of the whole population. It should include methods such as right to health indicators and benchmarks, by which progress can be closely mentioned; and evaluate them on the basis of outputs.
8. The nature of hierarchical health governance, administratively, financially and technically, also contributes to the poor state of the public health sector. Further, "Public Health, sanitation, hospitals and dispensaries" are state subjects. Health should be brought under the "Concurrent list" in the Constitution, which will empower both the centre and the states to handle health issues effectively.
9. Last but not the least, there should be enacted Public Health Law which should act as an umbrella legislation to regulate implement, monitor various health legislation. 'Right to health' should be given the status of fundamental right in the chapter of fundamental rights through amendment in the Constitution. In fact, health is a low cost, high return investment that can give a boost to every aspect of child development and also to a nation's overall progress and prosperity. There is an urgent need that the national policy making on health must get in tune with human rights jurisprudence and provide, at least, basic health care services as a matter of right to every citizen, especially, and to the children who are torch-bearers of the nation. Therefore, National Health Bill 2009 should be passed on priority basis so that people's health could be accorded top priority along with education and food security.

To conclude, 'right to health' cannot only be conceived as a traditional right enforceable against the state, rather it has to be acknowledged as a positive human right at a global level (Justice K.G. Balakrishnan, 2008).

**Table No 1: Health Hazards in Children**

S. No.	Occupation	Health Hazards
1.	Beedi Industry	Chronic Bronchitis & Tuberculosis
2.	Glass Industry	Asthma, Bronchitis, Tuberculosis, Eye Problems
3.	Handloom Industry	Asthma, T.B.
4.	Zari & Embroidery	Eye defects

5.	Gem & Diamond Cutting	Eye defects
6.	Construction	Stunted growth of child
7.	Rag Picking	Tetanus, skin diseases
8.	Pottery	Asthma, Bronchitis, T.B.
9.	Stone quarries/slate quarries	Silicosis

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