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CRC and Indian Position

CHAHAT MITTAL¹

ABSTRACT

A child means every human being below eighteen unless the age of majority is attained earlier under the law applicable to the child. Adopted by the United Nations in 1989, the CRC is an international agreement legally binding on the parties signatory to it. It is based on four basic principles: 1. Non-discrimination (Article 2), 2. Best Interest of the Child (Article 3), 3. Right to Life Survival and Development (Article 6), and 4. Right to be Heard (Article 12)

The Constitution, in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy), guarantees rights to the children of India under the articles mentioned below. Right to Constitutional Remedies when Rights of Children are Infringed If the above-mentioned fundamental rights are infringed, the appropriate courts may be approached. The constitution has provisions for constitutional remedies in Article 32 and Article 226. The research paper showcases other policies in India that have been taken to safeguard the rights of children and various steps to protect the children as well. Children, owing to their developing minds, are vulnerable to their environment. It is of utmost importance that such an environment is suitable for their growth and development, regardless of whether such child conflicts with the law or not, and be given adequate care and protection of the law. No nation can flourish if children of such a country suffer; therefore, with the help of various international, national, and state mechanisms, India tries to secure children's rights, as discussed above.

I. INTRODUCTION

A child means every human being below the age of eighteen years unless, under the law applicable to the child, the age of majority is attained earlier.² A nation's children are a 'supremely important national asset', and the future well-being of a nation depends upon how its children grow and develop.³ It is the duty of the state to look after a child (or 'intending to'), ensuring full development of its personality.⁴ To achieve this goal, a state must grant certain rights to the children. In India, rights of citizens including that of children have been directly or indirectly provided for by the Constitution of India. We shall first discuss in brief, the United

¹ Author is a student at Maharaja Agrasen Institute of Management Studies, India.

² Article 1 of the United Nations Convention on Rights of the Child, 1989.

³ Laxmikant Pandey v. Union of India, [1984] 2 SCR 795.

⁴ Sheela Barse and Ors. v. Union of India and Ors. JT [1986] 136 1986 SCALE (2)230.

Nations Conventions on Rights of the Child (hereinafter, CRC), 1989 to which India is a signatory.

(A) Objectives

The following objectives are involved in the present study:

1. To know about the position of law regarding the Rights of Children in India.
2. To know about the provisions of law relating to Rights of Children of India.
3. To know about the recent developments of Law regarding the Rights of Child at the Policy level and the development of the Jurisprudence within the fold of Municipal law and CRC.

(B) Research Methodology

The researcher has used doctrinal method of data collection and has extensively used the available commentaries available on the subject by various experts and has analyzed some recent and leading case laws on the subject as well.

(C) Statement of Problem

To know about the role of an International Treaty CRC with respect to the Rights available to the Children in India.

(D) Hypotheses

The existing legal framework of the Indian law is satisfactory to cater the problem of witnesses turning hostile during the trial in a court of law.

(E) Research Questions

1. What are the various factors which affect or influence the formulation of child friendly policies in India?
2. What is the impact of CRC on the Indian Legal System with respect to the Rights of the Child?

(F) Review of Literature

- Child rights child development in India: a regional analysis, Chandan Roy: "This Article deals with Being the signatory of UNCRC (1992), India globally recognized the significance of child rights. The Constitutions of India also guarantees certain child rights covering basic issues, like 'health', 'education' and protection from 'hazardous employment' and 'exploitation'. However, despite the existence of many legal provisions, the vulnerability of

Indian children in different dimensions cannot be undermined. This paper attempts to locate the status of child in development ladder of Indian economy at regional level and shows how the disparity in development indicators actually accelerates the nature of exclusive development. Child Abuse is emphasized as a principal inhibitor in child development.”

- Periodic Reports filed by India to Committee on the Rights of the Child: “These reports deal with the measures taken by the Union of India in Realisation of goals of CRC.”
- Children's rights in litigation: Use of CRC in Indian Courts, “This book deals with India ratified the UN Convention on the Rights of the Child (CRC) in 1992. By ratifying various international human rights instruments, including the CRC, India has expressed its commitment from time to time to protect the human rights of all its citizens, including children. This chapter presents, by way of examples, cases decided by High Courts of the states, the Supreme Court of India and some other authorities, in which the CRC has been used. It highlights its use in the framing of law and policy in the country. In the context of this chapter it is not possible to deal with all cases in all the High Courts of the states or the Supreme Court in which the CRC has been used. But the cases presented provide a rather representative picture of the interpretation and application of various CRC articles in high level Courts in India.”

II. CRC AND INDIA

Adopted by the United Nations in 1989, the CRC is an international agreement legally binding on the parties signatory to it. It has incorporated in its various articles rights of children without any discrimination whatsoever. “It was ratified by India on 11 December 1992. It has a preamble setting out different principles the CRC is built upon.

It is based on four basic principles:

1. Non-discrimination (Article 2)
2. Best Interest of the Child (Article 3)
3. Right to Life Survival and Development (Article 6)
4. Right to be Heard (Article 12)

The provisions of the CRC have been categorised as:

1. **PART I (Article 1-41):** It sets out the rights of children and obligations of governments.

The rights can further be categorised as:

- **Survival Rights:** the right to life of child and access to basic necessities to existence such as adequate food, shelter, standard of living and medical requirements.
- **Development Rights:** the right to education, to practice the religion of own choice and

cultural activities, freedom of thought and conscience, to play and leisure and to access to information.

- **Protection Rights:** rights that protect children from abuses which may be consequential to several kinds of circumstances, such as children subject to procedures of criminal justice system, children in employment, children who are refugees, children who have undergone abuse or exploitation.
- **Participation Rights:** rights of children to participate in activities of the society, especially matters that may affect their life, to assemble peacefully and to join associations.”

2. **PART II (Article 42-45):** It contains provisions regarding implementation of the provisions of the CRC.

3. **PART III (Articles 46-54):** It includes provisions for signing the convention by parties and rules and procedures thereafter for the purpose of ratification, enforceability, amendment, denouncement, etc. of the convention.

Three Optional Protocols to the CRC have been introduced which are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.⁵
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.⁶
- Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.⁷

As of now India has not signed the third optional protocol.

India, in its bid to become an ethical labour market to international corporations in 1991, ratified the United Nations Convention on the Rights of the Children in 1992. The Convention stems from Jebb’s desire to end the suffering of children, giving them instead a healthy, happy and safe environment that nurtured them physically, mentally, and emotionally. These facets find a strong resonance in the Convention.

Child rights go beyond just human rights, which exist to ensure fair and proper treatment of

⁵ The Optional Protocol was adopted by resolution A/RES/54/263 of 25 May 2000 at the fifty-fourth session of the General Assembly of the United Nations.

⁶ The Optional Protocol was adopted by resolution A/RES/54/263 of 25 May 2000 at the fifty-fourth session of the General Assembly of the United Nations.

⁷ The above Protocol, which was adopted at the sixty-sixth session of the General Assembly of the United Nations by resolution 66/138 of 19 December 2011, opened for signature in Geneva, Switzerland, on 28 February 2012 and remains open for signature thereafter at United Nations Headquarters in New York.

people across the world, and promote their well-being. “Children, defined as any person under the age of 18, need more than just human rights due to a set of unique needs stemming from their vulnerabilities.

Further, the rights as described in the Convention have been summarised into the following fundamentals with references to various articles. **The Right to and Identity (Article 7 and 8)**

Children are entitled to a name, legally registered with the government, and a nationality (to belong to a country). Further, they must have the right to an identity, in the form of a public record. This ensures national support, as well as access to social services.

1. The Right to Health (Article 23 and 24)

Medical care, nutrition, protection from harmful habits (including drugs) and safe working environments are covered under the right to health, and articles 23 and 24 enumerate access to special care and support for children with special needs, as well as quality health care (including drinking water, nutrition, and a safe environment) respectively.

2. The Right to Education (Article 28)

Right to free primary education is critical for helping children develop discipline, life skills while finding a safe and healthy environment to nurture a child’s physiological development. This includes freedom from violence, abuse or neglect.

3. The Right to a Family Life (Articles 8, 9, 10, 16, 20, 22 and 40)

If not family members, then children have the right to be looked after by caretakers. Children must live with their parents until it is harmful to them. However, ‘family reunification’, i.e. permission for family members living in different countries to travel to renew contact between family members is critical. Under the ward of a caretaker or family, they must be provided privacy against attacks on their way of life and personal history.

Children who do not have access to a family life, have a right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language. Refugee children have a right to special protection and help. In the case of misdemeanours, children have the right to seek legal counsel under a juvenile justice mechanism, with the fair and speedy resolution of proceedings.

4. The Right to be protected from violence (Article 19 and 34)

Protection from violence extends even to family members, and children must not suffer ill-treatment or sexual or physical violence. This includes use of violence as a means of discipline. All forms of sexual exploitation and abuse are unacceptable, and this Article takes into view the

sale of children, child prostitution and child pornography.

5. The Right to an opinion (Article 12 and 13)

All children deserve the right to voice their opinions, free of criticism or contempt. In situations where adults are actively deciding upon choices on behalf of children, the latter are entitled to have their opinions taken into consideration. While children's opinion may not be based on facts, it is nonetheless an important source of insight for parents, and should be considered. However, this depends on the child's level of maturity and age. Children have the freedom of expression, as long as they are not harming others with their opinions and knowledge.

6. The Right to be protected from armed conflict (Articles 38 and 39)

Armed conflict converts innocent children into refugees, prisoner, or participants in armed conflicts, and these are all circumstances which contravene with the spirit of War or any armed struggle can severely damage a child's morale as well as perceptions of ethics, and this must be corrected in a nurturing safe environment." While seeking to rehabilitate children affected by war, the government must also ensure that children are not forced to participate in any armed struggle.

7. The Right to be protected from exploitation (Articles 19, 32, 34, 36 and 39)

As exploitation is usually achieved through violent means, protection from violence is critical for freeing children from exploitation. This extends to abuse, negligence and violence by parents, even if it is justified as an instrument of achieving discipline at home. Further, children cannot be made to work in difficult or dangerous conditions. Children can only volunteer to work doing safe chores that do not compromise their health, or access to education or play. Sexual exploitation, another dimension of exploitation, is also prohibited, as an activity that takes advantage of them. Survivors of neglect, abuse and exploitation must receive special help to enable recovery and reintegration into society. Children also cannot be punished cruelly, even if it is under the ambit of the justice system. Death or life sentences, as well as sentences with adult prisoners, are not permitted.

III. CONSTITUTIONAL PROVISIONS REGARDING RIGHTS OF CHILDREN

"The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

PART III:

- **Article 14:** Citizens of India, including children, must be treated equally before law and must be given equal protection by the law without any discrimination or arbitrariness.

- **Article 15(3):** Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.
- **Article 21:** No person shall be deprived of his life or personal liberty without due process of law. A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.⁸
- **Article 21A:** The State shall provide free and compulsory education to all the children falling in the age group of six to fourteen years in such manner as the State may, by law, determine.
- **Article 23:** Prohibits trafficking in human beings and beggar or any other form of forced labour.
- **Article 24:** Prohibits employment of children under the age of fourteen years in a factory, mine or in any other hazardous employment.

PART IV:

- **Article 39 (e):** The state shall strive to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- **Article 39 (f):** The state shall ensure children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It must also be ensured that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 41:** The state is obliged to, within its economic capacity and development, secure provisions for educational opportunities and facilities.
- **Article 44:** The state shall make all possible efforts to secure a Uniform Civil Code for all the citizens, thereby implying a uniform code for the adoption of children.
- **Article 45:** The state shall endeavour to provide free and compulsory education to children until they attain their age of fourteen years.
- **Article 46:** It is the duty of the state to promote the educational and economic interests

⁸ Ashok (Dr.) v. Union of India AIR 1997 SC 2298.

of weaker sections of the society with special care and therefore, the children therein.

- **Article 47:** The state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children.
- **Article 51 (c):** International laws and treaties shall be respected by the state to every possible extent, including the CRC and its optional protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.
- **Article 51 A (k):** It shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.
- **Article 243G** provides for the institutionalisation of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of Schedule 11).

Right to Constitutional Remedies when Rights of Children are Infringed

If the above mentioned fundamental rights are infringed, the appropriate courts may be approached. The constitution has provisions for constitutional remedies in article 32⁹ and article 226¹⁰.

- **Article 32:** A person has right to move to the Supreme Court to protect his fundamental rights. It is also a fundamental right.
- **Article 226:** A person may approach High Court by virtue of this article to get his rights protected, not necessarily fundamental rights.”

The courts, for the purpose of protecting the rights they are authorised to, may issue writs:

- **Habeas Corpus:** literally translating to ‘you may have the body’, a person, whether or not a child, who is detained, whether in prison or privately, is directed to be produced before the court. If found that such detention was illegal, he is released.
- **Mandamus:** meaning ‘we command’, mandamus issued by Supreme Court or High Court orders the lower courts/tribunals/public authorities to perform a public or statutory duty which they are obliged to perform but have failed to do so.
- **Prohibition:** it is issued by the Supreme Court or the High Courts, to prohibit inferior courts under them from transgressing the limits or powers vested in them.

⁹ Indian Const. art. 32.

¹⁰ Indian Const. art. 226.

- **Certiorari:** it enables a superior court to quash an order already passed by the inferior court/tribunal/quasi-judicial authority.
- **Quo warranto:** it literally means by what right. It is issued to restrain a person from holding a public office he is not entitled to have.

These writs may be extended to any of the lower courts by law made by the parliament.

Since children are unable to access the legal system by themselves, a **Public Interest Litigation** may be filed in the Supreme Court or the High Courts by a spirited public individual or a non-governmental organization against the Central Government or State Government or any of their respective agencies by virtue of Article 32¹¹ and Article 226¹² for protection of the rights of the Children.

IV. OTHER LEGISLATIONS/POLICIES IN INDIA

Some of the crucial legislations and policies in India to safeguard the rights of children are:

- **Indian Penal Code, 1860¹³:** “The Indian Penal Code by its various sections protects explicitly children and their rights. The sections applicable to punish offenders for a crime can also be invoked to protect the children against such offenders.
- **Guardians and Wards Act, 1890¹⁴:** The act supersedes all the laws regarding guardianship of a child. It is a universal code specifically designed for Muslims, Parsis, Christians, and Jews as their laws don’t allow full adoption but only guardianship.
- **Child Marriage Restraint Act, 1929¹⁵ (Amended in 1979):** It restrains child marriage until the minimum age, i.e., 21 for males and 18 for females, has been attained by them. It applies to people of all the religions.
- **Immoral Traffic (Prevention) Act, 1956¹⁶ (Amended in 1986):** This act with respect to children deals with person(s) who procure or attempt to procure any child for prostitution or person(s) who are found with a child in a brothel (it is presumed child has been detained for the purpose of prostitution) and punishes them. It also provides for the due care of rescued children.
- **The Women’s and Children’s Institutions (Licensing) Act, 1956¹⁷:** The Act was

¹¹ Supra Note 8.

¹² Supra Note 9.

¹³ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

¹⁴ Guardians & Wards Act, 1890, No. 8, Acts of Parliament, 1890 (India).

¹⁵ Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament, 1929 (India).

¹⁶ Immoral Traffic (Prevention) Act, 1956, No. 104, Acts of Parliament, 1956 (India).

¹⁷ The Women’s & Children’s Institutions (Licensing) Act, 1956, No. 105, Acts of Parliament, 1956 (India).

enacted with an object to protect women and children from exploitation and inhuman activities going on in institutions. It mandates the institutions for women and children to get a license from the licensing authority before establishing or maintaining the institution.

- **Probation of Offenders Act, 1958¹⁸**: This act with the help of the Juvenile Justice Act, 2000 tries to ensure that no person under the age of 21 years faces imprisonment.
- **National Policy for Children, 1974**: It is the first written policy for the children in India. It aims at providing better enforcement of constitutional rights of the children along with those granted by the CRC. Some of the provisions include free education, comprehensive health and nutritious plans, etc.
- **Bonded Labour System (Abolition) Act, 1976¹⁹**: The act aims at eradicating the bonded labour system in India which exploits the weaker sections of society, especially children.
- **Child Labour (Prohibition and Regulation) Act, 1986²⁰**: This act regulates the working conditions for children in employment and prohibits working of children in certain kinds of employments.
- **National Policy on Education, 1986**: The policy is extensive in nature and elementary, university and adult level education, all fall under its scope. It tries to remove inequality by making special provisions for women and other weaker sections of society such as Schedule Castes, Schedule Tribes, etc.
- **National Policy on Child Labour, 1987**: The act endeavours to eradicate child labour from Indian society wherever necessary.
- **The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000²¹**: The main objective of the Act is to regulate and prevent the pre-natal sex determination in order to prevent female foeticide.
- **National Health Policy, 2002**: This is the second National Health Policy, after the first in 1983. The policy provides for Universal Immunization Programmes, health care related education in schools and free regular health checkups at schools etc.

¹⁸ Probation of Offenders Act, 1958, No. 20, Acts of Parliament, 1958 (India).

¹⁹ Bonded Labour System (Abolition) Act, 1976, No. 19, Acts of Parliament, 1976 (India).

²⁰ Child Labour (Prohibition & Regulation) Act, 1986, No. 61, Acts of Parliament, 1986 (India).

²¹ Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, No. 57, Acts of Parliament, 1990 (India).

- **Protection of Children from Sexual Offences Act, 2012²²**: The act aims at punishing the offenders who are guilty of sexual offences against children below the age of 18 years of age. It also lays down procedures for the trial, such as, the name of child victim shall not be disclosed, proceedings of the case are to be conducted in court with cameras recording the trial, accused is not to be kept in-front of the child victim during examination or cross- examination, etc.
- **Juvenile Justice (Care and Protection of Children) Act, 2015²³**: This act is one of the important acts in India for the children in need of care and protection and also children in conflict with the law. It requires that the state provides free legal support to the juveniles, and proper care and protection is provided to those in need.” It also calls for a child-friendly approach in adjudication and disposition of matters involving children.

V. CURRENT POSITION

On June 3, 2014 Shankar Aggarwal, Secretary of the Ministry of Women and Child Development and Head of Delegation, said India was a home to 472 million children, which was 20 per cent of the world’s child population. “Child rights were lead indicators of national development at all levels. The establishment of the National Commission for the Protection of Child Rights in 2007 was a landmark initiative, followed by the adoption of the National Policy for Children in 2013, which viewed children as individuals with rights and responsibilities. The Government welcomed and encouraged the work of voluntary organizations and individuals in the area of child welfare, development and protection. The vision was for India’s children to be well-nurtured with full opportunities for growth and development in a safe and protective environment.

In the interactive dialogue, Committee Experts highlighted the size of India’s child population, 41 per cent of the total population and 20 per cent of the world’s child population, and commended the many initiatives and pieces of legislation taken. Questions were raised on a wide array of subjects; key issues were child marriage and violence against children, in particular sexual abuse and gang rapes of girls. Juvenile justice was also discussed, as were actions to tackle under- nutrition, child poverty, maternal health and the under-five mortality rate. The effectiveness of India’s anti-discrimination campaigns was considered, as well as alternatives to institutional children’s homes.

Under the Optional Protocol on children in armed conflict, Committee Experts asked for

²² Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

²³ Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2015 (India).

clarification of the minimum age that children could join the military, about military schools and the reported recruitment of children by non-State armed groups.

On the Optional Protocol on the sale of children, child prostitution and child pornography, Committee Experts asked questions about legislation and cooperative measures to combat trafficking in persons, as well as the sale of children through surrogacy and adoption.

In concluding remarks, Bernard Gastaud, Committee Member acting as Country Rapporteur for India, said given the crucial context of the enormous size of India, the Government's clear commitment to children's rights was commendable." Challenges included coordination and effective use of funds. The Committee was deeply concerned about discrimination, and emerging issues such as surrogacy, adoption and alternative care. Implementation of legislation was the key.

Vivek Joshi, Joint Secretary at the Ministry of Women and Child Development, in concluding remarks, said India was determined to promote and protect human rights for its people, in particular its children, and would continue to involve all stakeholders, including civil society and the private sector.

The delegation of India included representatives from the Ministry of Women and Child Development, Ministry of External Affairs, Ministry of Home Affairs, Ministry of Human Resource Development, Ministry of Labour and the Permanent Mission of India to the United Nations Office at Geneva.²⁴

VI. CONCLUSION

Children, owing to their developing mind are vulnerable to the environment they are in. It is of utmost importance that such environment is made suitable for their growth and development, regardless of whether such child is in conflict with law or not and be given adequate care and protection of the law. No nation can flourish if children of such nation suffer, therefore India with the help of various international, national and state mechanisms tries to secure the rights of the children as has been discussed above.

²⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14663&LangID=E>