

IV.4 : UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD, 1989.

The Convention on the Rights of the Child is the most widely ratified human rights convention in history. About 96 per cent of the world's children live in States that have recognized their rights and are legally obliged to fulfill them. The Convention on the Rights of the Child was entered into force on 2nd September 1990.¹ Surprisingly, the united states of America did not ratify the convention. Of course, the Government of India ratified the Convention on the Rights of the Child on 12 November 1992.² Although the convention contains 54 articles covering various aspects which the state authorities are obliged to comply with, the aspects which are directly or indirectly pertains to courts proceedings are noted herein.

1. WELFARE OF THE CHILD BE THE MOTTO

Article 3 of this convention provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. This indicates that when a child³ is dealt with by the

originations of the government, the sole motive is to be the development and welfare of the child. The intention must be for rehabilitation and betterment of the child and nothing else.

Article 19 of the convention provides that the states Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

In our country too, in consonance to the international bondage and mandate of the constitution, certain legislations have been enacted by the parliament of India. To name the Juvenile Justice (Care and Protection) Act, 2000 has been passed by the parliament of India. This Act is unique in its nature. It protects the right of the juvenile in the event they are found in conflict with law. Starting from the stage of enquiry, trial and findings special measures have been provided for their protection. The aim of the Act is to reform the juveniles. Similarly, adequate measures have been provided for protection and rehabilitation of the neglected children also.

2. PROTECTION FROM TORTURE, CRUEL OR OTHER INHUMAN OR DEGRADING TREATMENT

Article 37 (a) of the convention provides that the states Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. It further provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.⁴

Article 37(c) of the convention provides that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

Article 37(d) of the convention provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

In the sub-chapters above, protection in respect of general people has been narrated. The protection of the child is more secure than the general protection. Such protections are intended keeping in mind that the child of today is the future of tomorrow. Unless adequate protection is given to a child he might not get the opportunities for reformation and rehabilitation.

3. BASIC PROTECTION ON APPREHENSION AND DURING ENQUIRY

Article 40 of the convention provides that the states Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's

reintegration and the child's assuming a constructive role in society.

Article 40(b) of the Convention provides that every child alleged as or accused of having infringed the penal law has at least the following guarantees:

- (i) To be presumed innocent until proven guilty according to law;
- (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of

witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

Thus, from the above provisions of the convention it has become clear amongst others that whenever a child or juvenile-in-conflict with law is produced before the court in connections with any proceedings or inquiry, the court of law should keep in mind that whatever order be passed are only for the interest of the child and not for his punishment. The court is to see that the child is rehabilitated in the society so that he would become a good citizen of the state.

REFERENCES

1. http://www.unicef.org/india/children_3220.htm
2. The state of the World Children, UNICEF
3. As per Article 1 of the convention Child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
4. Article 37(b) of the Convention.
