CHILD PROTECTION IN INDIA: EMERGING ISSUES

SUMMARY
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Under the Supervision of:

DR. PREET SINGH
Professor
Department of Law
M.D. University, Rohtak.

Submitted by:

MRS. SONU
Lecturer
Department of Law
M.D. University, Rohtak.

DEPARTMENT OF LAW
MAHARSHI DAYANAND UNIVERSITY
ROHTAK-124001 HARYANA (INDIA)
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SUMMARY

India, the union of twenty-eight states and seven union territories, is a socialist, secular, and democratic republic. The Indian constitution envisages a parliamentary form of government and is federal in nature with some unitary features. The size and population of some of India’s largest states is comparable to some countries in Europe, Africa, Latin America, or Asia. India continues to wage its battle against poverty, and its attendant, such as, high mortality rates, malnutrition and illiteracy, the greatest victim of which are children and women.

The question of child’s rights has emerged as one of the most vibrant issues for discussion in this new millennium. The fact remains that even today children are a part of the disadvantaged minority group so far as realization of human rights and social justice are concerned. The main reason for this lacuna is that children are still not a complete political entity in the true sense of the term. Besides, they are generally physically, mentally and economically defenseless. In this rapidly changing age of globalization, taking care of child’s at every stage has taken a back seat. This not only affects the whole value system, but also their present social and economic needs. No doubt that the future of humanity depends on children to a large extent, even then a very partial and parochial approach has been followed towards bringing them on the mainstream of social and political agenda.

The United Nations Convention on the Rights of the Child is one of the most widely accepted international conventions. Almost all countries of the world including India has agreed to it. However, progress has been quite slow in putting it into practice. Reasons for this include misunderstandings about convention, which has been seen by some people as being “anti-family” or simply about allowing children to have their own way. Neither of these true but these misconceptions need to be addressed when seeking to increase awareness of the convention and what it means in practice. Poverty is a major barrier which
prevent implementation of the convention. However, it can be used to guide
efforts aimed at promoting development and eliminating poverty. This will ensure
that children gain the maximum benefit from such actions.

There has been a paradigm shift in approaches towards children. The shift in
focus is from the welfare to the development approach.

In the last decade, we have witnessed a tremendous progress in the areas of
literacy especially female literacy and women employment. Now the Right to
Education Act has been passed provides free and compulsory education to all
children of India in the 6 to 14 age group but denies right to secondary and senior-
secondary education. Moreover, it left the scope of child labour by not including
the child of 0-5 age group. What will be their fate.

Child labour is another major problem faced by India, which is also directly
related to the child. If the literacy rate is high then there can be decrease in child
labour because the educated people can better understand and differentiate
between sending children to work and to school. As there has been several labours
legislation enacted alongwith Article 24 of the Constitution of India which
prohibits the employment of children in mines, factories and hazardous industries,
but not free from defects.

The Juvenile Justice (Care and Protection of Children) Act, 2000, to
protect and safeguard the interest and welfare of such children and to give effect
to the minimum standard. By the amendment in the Juvenile Justice Act, the law
makers have tried to spell out the role of state as facilitator rather than a doer. The
very fact that the Act has been amended demonstrates the willingness of
governmental machinery to ensure that children in difficult circumstances are the
responsibility of everyone and by amending the same, it has been tried to give a
new face to the juvenile justice system in India. The new Act has been renewed
with spirit to show greater sensitivity to the needs and rights of a child. But still
the Act has been criticized on few counts like, the Act fails to expressly lay down
the age of innocence, i.e., the minimum age below which this Act would not be
applicable. The problem of special care and needs of the disabled children have been ignored. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial etc.

In other fields also the law is not adequate to deal with the problems of children. One of them is violation of the Child Marriage Restraint Act 1929. Thousands of child marriages are performed in violation of this Act under the current law, if a child is sexually abused, a case can be filed for statutory rape or ‘outraging the modesty of the women’. In case of the girls and for ‘unnatural sexual offences’ in the case of boys. The ordinary criminal laws are totally inadequate to protect the children who are victims of sexual abuse. The legislation does not include the common forms of child sexual abuse nor their impact on the children. Although the Act has been repealed by the new Prohibition of Child Marriage Act, 2006 but situation remains same.

Children in India suffer from various health problems also during their early childhood and even before birth leading to short ended and unhealthy lives. Here also the law is not adequate to protect the health of children across India.

Female Foeticide is another problematic area it is so many years since the enactment of the pre-natal diagnostic techniques (Regulation and prevention of misuse) Act, 1994. It is also over seven years since the amendment of PNDT Act, 2003 came into existence. Yet enforcing the law has proved to be a major challenge given resistance from the unethical medical practitioners. Even the law agencies like the police or the courts tend not to view the breaking of law by doctors and medical professionals as serious offences against women and children and against the law of the land. Lack of adequate medical facilities is leading to increasing reach of private health service providers, whose practices are difficult to monitor.

Every day man, women and children are trafficked across India and throughout South Asia, with India being the source country as well as a transit and destination point. However, cross-border trafficking is only the tip of iceberg.
There is considerable degree of trafficking between state within the country. Many of those trafficked are children, sometimes as young as 8 years old, or over younger. Thus, child trafficking is another major problem.

The above stated problems are with children whose leg and limbs are still intact but what about the disable children (physically or mentally). It is unfortunate that society continues to treat disability with apathy or at best pity, on the one hand, and revulsion on the other. In spite of recognition of the need to make special efforts for the physically and mentally challenged, the efforts have been inadequate.

The problem of child in their respective personal laws is also going grave day-by-day. Further on inter-country adoption we don’t have any legislation, it is only CARA under which some guidelines were put to get the adoption done.

Our government also taking necessary actions from time to time by passing some schemes, plans, policies and programmes etc. to protect the child in this world full of conflict and economic, social, intellectual and violent confrontations. But the question is, have we taken necessary measures to make right of children meaningfully available to them for their overall social, cultural and individual growth?

The United Nations Convention on the Rights of Child (CRC) represents a turning point in the international movement on behalf of child rights. This comprehensive document contains a set of universal legal standards or norms for the protection and well-being of children. The range of rights can be summarized as three: Provision, Protection, and Participation.

Since the independence of India; we have seen committed efforts of Indian Government for the protection of child rights in India at all levels. As a commitment toward children, the Government of India has set up the Department of women and child development in 1985. The creation of a separate department was a landmark step in bringing child rights to the centre-stage. Another positive step in this regard was accession to the convention on the rights of child in 1992.
It is noteworthy that in the last three decades several major policies and action plans have been announced for improving the status of children. But still the commitment undertaken by India require that legislative administrative and other measures follow to implement specific policies and a review and revision of all pertaining laws to the children.

Further the passing of Right to Education Bill in 2008 paves the way for the centre to pass the Right of Children to Free and Compulsory Education Act, 2010 which provides the right of children to elementary education free of cost. However, the Constitution of India, legislature and Supreme Court have declared the education a fundamental right, but it does not speak about millions of children who are in the age group of 0-5 years. It is needed that constitution should again be amended and the children of age group 0 – 5 years should be included, as by the time the child reaches the age of 6 years he/she gets in to the child labour due to poverty.

Child Sexual Abuse and exploitation is not new, the extent of the problem is – children are sold, rented out, and sexually abused by adults everywhere. Thus, there is a need to make a comprehensive legislation to deal with the problem.

In order to deal with the problem of child trafficking, it is noticed that there has been a very little emphasis on investment in prevention of trafficking. Such investment would cost effective because it would reduce vulnerability of children and their families and increase the opportunity for future development of children.

There is need to introduce the concept of guardian or child’s legal counsel or a social worker involved throughout the court proceedings in which children are involved.

As far as the problem of adoption is concerned, Hindus have provisions relating to same in HAMA and some in Juvenile Justice (Care and Protection) of Children Act, 2000. Muslims and Christians have their own law of adoption according to their own religion. However, what is required is that there must be a
uniform law on adoption throughout India. A child should not be discriminated on the basis of his/her religion.

It is also suggested that there is a need of comprehensive law on inter-country adoption where a child is more vulnerable instead of in-country adoption.

Further the problem of child begging is an acute problem. To cope up with there is a need that firstly there must be a central legislation to cope up with the problem and secondly all authorities must be directed to introduce the legislation in their concerned states.

Further, today’s world is the world of global terrorism. What may happen that the other countries will give training to the young boys who are below 18 years and they will be saved from severe punishment. Hence there must be an amendment that the Juvenile Justice Act will not be applicable to the juveniles of the other countries as well as the juveniles who indulge into anti-national activities as well as indulge into terrorist activities have to be excluded from Juvenile Justice Act and tried under the provisions of Cr. P.C.

The decrease in sex ratio is the result of traditional son preference society and modern technology. The misuse of law, wrong implementation of law has added to the woe of female foeticide. To combat it firstly, it must be realized that even a full proof law is just beginning of a struggle to curb notorious practice like female foeticide. Government, civil society and media should work hard in hard to combat this inhuman practice.

Determining the age of child is a big problem. In a country like India, many children do not have birth certificate. This procedure needs to be simplified. Besides, it is recommended that till such time as age is determined the benefit of doubt should be in favour of the child.

Educating the child is not enough without educating the parents. Hence, there should be a greater emphasis on adult education.

It is suggested that the government take up different programmes like food for education, providing financial assistances, self-employment of rescued child
labour, after completion of their study and establishment of production cum-
training centres for child labour with stipend, etc. to reduce the incidence of child
labour. Efforts should also be taken by the voluntary organisation to involve the
local public and parent of child labour. So that they become aware of the efforts
made by the government for the upliftment of child labour.

Lastly, there is a need to make the government functionaries, NGOs and
professionals working with children more aware about the Convention on the
Right of Child (CRC). CRC should be made part of the school curriculum and
school children should be involved in dissemination of information about child
rights through child to child and child to community activities. Child Rights
should also be included in curriculum of all colleges as well as in professional
training of all those who work with children or provide services to them.

In brief the need is to mould attitude and perception of adults and children
towards child rights. For this, each one of us as an important member of civilized
society must fulfill our obligation to the young generation by providing,
conducive environment to every child so that its all round personality. physical,
mental, moral and spiritual is developed.

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