

Importance of Girl Child and the Law Throughout India-A Study

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Introduction:

Children and childhood across the world have broadly been considered in terms of a “Golden Age¹” that is synonymous with innocence freedom, joy, play and the like. It is the time when spread the rigorous of adult life, one hardly shoulders and kind of responsibility or obligations.

Loyd de mause, another historian, in the history of childhood painted a very negative image of childhood and family life in the past. In fact he went to the extent of saying that the history of childhood is a night mare from which we have only recently one goes, the lower the level of child care and the more likely children are to be killed abandoned, beaten, terrorized and sexually abused. Today ofcourse we view abandonment of children in family tales and in legends as if it were all fantasy. Early western historians writing about children and their childhood were of the view that till the middle ages, abandonments harsh punishment and the use of fear and other life-inhibiting measures were all part of the era’s social history economics and pattern of families. No doubt the era of middle ages was rightly referred to as the dark age, perhaps an important step in the definition rights came in 1215 in England. After a period of civil war, the English nobility forced king John to limit his power, which had been absolute and virtually unchecked through the Magna Carta. Among the other things the Magna carta guaranteed that on free man should be deprived of life, liberty or property without the due process of law.likewise in ancient Indian law, especially in the laws of Manu, the child through located very near the bottom of a social pyramid was bestowed society’s protection and this protective indulgence was best reflected in matters which concerned the children, most-namely their chastisement. Children were only to be beaten with a rope or bamboo stick split at the end.

Historical Evolution- “ Welfare of the Child”

Traditionally at common law the father was considered as the sole guardian of this person and property of the child. The authority of the father in every aspect of the child’s life including his/her conduct, education, religion and maintenance was considered abducted and even the court refused to interfere with the same. Mother did not have independent legal status their identities being forget with that of their husbands upon marriage. As divorce became possible and mothers began to have independent legal existence and residence. Their claim if not right to have custody of the children began to be recognized by the courts. However despite a series of legislations-starting with the custody of infants act 1839, to claim the custody over minor children, the rights of the father continued to remain supreme.

Best interest of the child in international HRL

While the welfare of the child principle dominates the domestic legal frame work of a comparable legal standard is found in international Human Rights Law. According to United Nations convention on the right of the child here in after (CRC) in all actions concerning children whether undertaken by public or private social welfare institution courts of law administration authorities or Legislative bodies. The best interests of the child shall be a primary consideration. The convention directs the state parties to ensure that both parents have common responsibilities for the upbringing and development of a child. The CRC provides that a child should be separated from his/her parents or whether the parents are living separately and a decision must be made as to the child’s place of residence in generally flexible, adaptable and reflective of contemporary attitudes regarding family within society.

The rights of children is one area on which the National human Rights Commission (NHRC) has tried to focus continuously ever since it was constituted in October 1993. It observed from the very beginning that despite there being major provisions in the constitution of India for survival, development and protection of children as well as Law to safeguard their interests including the fact that our government of India had rectified the children’s rights commission (CRC). Children all over the country especially those belonging to weaker sections of the society, were found to be vulnerable and their dignity and human rights were often trampled. Though the initial few years ago of the commission were spent on making an overall assessment about the range of issues that affected children but once this task was completed, the commission concentrated its attention on preventing and eradicating the problems of child rights, child marriage, child trafficking and prostitution, child violence, child rap, etc.

Important Laws for children:

The constitution contains provisions with respect of children under part III of the constitution.

- 1). Article 14 Equality before law, equal treatment and protection under the law. All children in similar circumstances are required to be treated in a similar manner and if not so treated such treatment can be challenged on the ground of discrimination and arbitrariness.
- 2). Article 15(3) Make special provision for women and children. Special enactments made for the benefits of children.
- 3). Article 19(1) Citizens of India has the right to freedom of speech and expression, under Indian law, child labour is prohibited only in factories, mines or other hazardous employments. Therefore there is no blanket ban on employment of children. Children form part of labour force they are not permitted to unite and fight for their rights as workers.
- 4). Article 21 This article guarantees the right to life to all persons. The Supreme Court has interpreted "right to life" to include right to food, clothing, adequate shelter, and other basic necessities of life.
- 5). Article 22 Provides for safeguards upon arrest, and states that a person should be produced before the nearest Magistrate within 24 hours of arrest. A juvenile in conflict with law or a child in need of care and protection should be produced before the Competent Authority established under the Juvenile Justice [Care and Protection of Children] Act 2000 within 24 hours of having been picked up by the police.
- 6). Article 23 Prohibits trafficking in human beings and forced labour. Any contravention of this provision is punishable under law
- 7). Article 24 Prohibits the employment of a child below 14 years in any factory or mine or any other hazardous employment.
- 8). Article 39(e) & (f) The State is required to ensure protection of children of tender age from abuse, and from entering vocations unsuited to their age and strength. Children are also to be provided with equal opportunities and facilities to develop in a healthymanner. The State is to further ensure that childhood and youth are protected against exploitation and abandonment.
- 9). Article 41 The State is required to take steps to secure educational opportunities and facilities
- 10). Article 44 The State is to endeavour to secure for all citizens a uniform civil code. A uniform civil code implies a uniform legal framework for adoption of a child applicable to all religions
- 11). Article 45 The State is to takemeasures to ensure free and compulsory education for all children till they attain 14 years of age.
- 12). Article 47 The improvement of public health and the raising of the level of nutrition is a primarydutyof the State
- 13). Article 51(c) The State is to respect international law and treaty obligations. The Government of India and the State Governments are obligated to the commitments contained under the Convention on the Rights of the Child

Public Interest Litigation [PIL]

PIL may be resorted to in order to ensure that the State performs its duty towards children. PIL has resulted in improving the conditions prevailing in child-care institutions, enforcing the implementation of the Child Labour [Prohibition and Regulation] Act, strengthening inadequate laws, setting aside discriminatory laws, etc. Generally, an aggrieved person files a petition before the Courts to redress his/her grievances. The concept of PIL recognises that certain persons are unable to access this conventional mode of justice due to poverty, age or vulnerability, and it is therefore imperative that some other person or organisation is enabled to move the Courts to protect the rights of such persons. Children are unable by themselves to access the legal system and claim their rights. A public-spirited individual or a non-governmental organisation may file a PIL to ensure that a particular child or children are protected and ensured their legal rights. A PIL is to be filed before the writ jurisdiction of the Supreme Court or the High Courts, and the opposite party is the Central or State Government, or any of its agencies. The Constitution enables the filing of PIL under the following articles; Article 32 : this article empowers the Supreme Court to intervene to enforce rights guaranteed by the Constitution. Article 226 : this article empowers the High Courts to intervene to enforce rights guaranteed by the Constitution.

Right to Health

Article 21 of the Constitution which deals with right to life has been interpreted by the Courts to include "right to health". Article 47 of the Constitution of India states that the improvement of public health is one of the primary duties of the government. Under the Bombay Municipal Corporation Act 1888 it is the duty of the corporation to establish and maintain hospitals. Pt. Parmanand Katara vs. Union of India & Ors. [AIR 1989 S.C. 2039] This case was filed for a direction that every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life, and only thereafter should the procedural criminal law be set into motion in order to prevent deaths that can be avoided by prompt medical treatment. The Supreme Court held that every doctor whether at a Public Hospital or otherwise has the professional obligation to provide medical services with due expertise for protecting life. Legal procedures should follow medical treatment, and should not interfere with the saving of a life. Medical professionals who give treatment should not be harassed with legal procedures; these procedures often deter a medical professional from perform his duty.

Right to Education

Article 45 of the Constitution of India provides for free and compulsory education for children until they complete 14 years of age. Article 41 of the Constitution of India provides for the government to take effective steps for securing the right to education. Article 39 of the Constitution of India states that the government must direct its policy towards giving children opportunities and facilities to develop in a healthy manner. Article 38 of the Constitution of India states that the government must attempt to eliminate inequalities in facilities and opportunities. Unni Krishnan, J.P. vs. State of Andhra Pradesh [AIR 1993 S.C. 2178] This judgment emphasises the importance of education, and included the right to education as a fundamental right under Article 21 of the Constitution, i.e. right to life. The Supreme Court observed that 'education is a preparation for a living and for life'. This judgment concluded that, the right to free education upto the age of 14 years is a fundamental right. 'We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.'

Definition of Law:

This boils down to a question of definition of Law but speaking truly to define Law is baffling. Law has many theories and many faces. Law is a concept which includes in itself many things, different from each others. What is law? It is very simple and convenient. They say that all rules of whatever nature, origin or character which the courts of law recognize and normally enforce are law. Article 13(3)(a) of the Indian constitution says that "Law includes any ordinance order, by law, rule, regulation notification, custom or usage having in the territory of India the force of law.

Article 141 of the constitution of India says, the law declared by the Supreme Court in course of decision is significantly important. It is declaratory for the nation."

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

The above article of the Indian constitution empowers the Supreme Court to declare the law – a law different in kind from the law enacted by the parliament or state legislatures. What is more constitution also recognizes the role of the Supreme Court to alter the law in course of its functions to interpret the constitutions. Thus Supreme court decisions have a binding force. Supreme court decisions such as laws. If we go deep into the concepts of a Judge-made laws or Judicial Legislation as it based on reason and experience.

Special constitutions of children:

The cases on children have been divided into sections on prisons, institutions, child labour, inter-country adoption and the girl child. As children are unable to litigate for themselves, these causes form a distinct category separate from other PILs. Most of the children on whose behalf petitions have been filed do suffer from the social and economic disabilities that were identified by the courts in the early PILs. However children from an even more disadvantaged class unable by definition to petition the courts themselves, they have to rely on the parents patriotic role of the state.

The constitution has recognized the special needs of children in articles 15(3), 24, 39(f) and 45. It was using the mandate provided by these articles and by the children's acts of different states that the cases on prisons were filed. It was only in 1986 that juvenile justice issues were codified in a central enactment, the juvenile justice act.

Another special legislation the child labour Act 1986 was passed ostensibly to protect the rights of the child.

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10. Government of India. 1974. *National Policy for Children*, New Delhi: Government of India.

Important websites :

1. www.nhrc.nic.in (National Human Rights Commission)
2. www.wcd.nic.in (Ministry of Women and Child Development)
3. www.socialjustic.nic.in (Ministry of Social Justice and Empowerment)
4. www.mohfw.nic.in (Ministry of Health and Family Welfare)
5. www.education.nic.in (Department of School Education & Literacy and Department of Higher Education)
6. www.labour.nic.in (Ministry of Labour)
7. www.lawmin.nic.in (Ministry of Law & Justice)