



UN CONVENTION ON THE RIGHTS OF THE CHILD AND ITS ENFORCEMENT IN INDIA

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Abstract

Indian is committed to the welfare of children in accordance with the provisions of Convention on the Rights of Child. Due to international obligation as enshrined in ratification of Convention, India continuously took initiatives for child rights. Some protective measures already exist in Indian Legal system before the adoption of Convention by UN. This research covers key provisions of Indian Constitution, legislations, policies and programmes related with child health, education, safety, security, sexual abuse and gender discrimination. The objective of study is to examine the Indian initiatives in the light of UN Convention related to Children. This study is based on secondary sources and a qualitative approach is adopted for analyzing Indian commitments for their children.

Key Words: Child Rights, Convention, UN, India and Legislations.

The Convention on the rights of the child that was ratified in September 1990 mandated all countries to safeguard the rights of their children. The World Summit on Children in New York called upon all countries or participatory ones to ratify the Convention. World leaders also have given high priority to the rights of the children. The governments worldwide and especially those in the developing world are forced to make a significant contribution to the implementation of the CRC. The government of India must move as well in transforming promise into practice. The legislations that cover the issue of child rights has been supported over the past years. In India, there are approximately 250 legislations that directly or indirectly involve children.

Indian Constitution includes a comprehensive legal code of child welfare and protection. Articles 15, 24, 39, and 45 are related to the prevention of child exploitation, forbidding child labor, and guaranteeing the right to education and development. Article 21 A was added to the Constitution under the 86th amendment act of 2002 and was referenced to free and compulsory education between the ages of 6 and 14 years, and is now followed under the Right to Education Act, 2009. Moreover, Articles 23 and 24 forbid the trafficking of human beings, including children, and child labor in dangerous occupations that protect human health, safety, and dignity.

The Directive Principles of State Policy also enhance the pledge of child welfare. Articles 39(e), 39(f), and 45 deal with the importance of safeguarding children against exploitation in economic terms and providing early education and care. Articles 42 and 43 highlight fair and conscionable terms of employment, fair living standards, and recreational and cultural enrichment, which are of particular significance to child labor issues. Together, these provisions represent the vision of the Indian Constitution toward a society in which children are brought up, shielded, and enabled to fulfill their potential.

Child marriage is a major infringement on child rights, as it denies children education, health, and a secure childhood. As per its obligations to the UN Convention on the Rights of the Child (CRC), the Prohibition of Child Marriage Act, 2006, was passed to replace the old law enacted in 1929. It imposes harsher penalties on parties involved in child marriages and stresses the protection of at-risk children.

This was further cemented by the Supreme Court of India in a landmark decision in 2006 that declared that marriage registration is required in the whole country as a measure to prevent child marriages via legal vigilance. Such developments mark India's meaningful efforts to bring its national legislation in line with international standards on child rights and the eradication of harmful traditional customs.

Consistent with India's commitment to the United Nations Convention on the Rights of the Child (CRC) in Articles 28 and 29, which acknowledge the right of every child to free and compulsory primary education, the country made a path-breaking move by passing the Right to Education (RTE) Act in 2009. It provided a constitutional framework to achieve this right after the

passage of the 86th Constitutional Amendment Act, 2002. The amendment provided three important safeguards to children for education: (i) insertion of article 21-A under Part III as free and compulsory education of every child between the age of 6 to 14 will be a fundamental right; (ii) amendment to Article 45 to strengthen the commitment of the state to provide early childhood care and education; and (iii) addition of Clause (k) to Article 51-A which puts parents and guardians under obligation to provide educational opportunities to their children.

The RTE Act was finally enacted in August 2009 after seven years of constitutional amendments, representing a significant turning point in the history of India's protection of children. The Act underpins the commitment to universal elementary education and provides assurances that not only do children have access to school, but also that they have access to school with equitable levels of education. This is a sure sign of India being closely aligned with the CRC perspective of education as a means of empowering children and equipping them to live dignified lives of equality and contribution to society.

India has adopted progressive legal measures to curb child labor by establishing a series of sector/categorical-specific legislations as well as overall legislations by following Articles 32 and 26 of the United Nations Convention on the Rights of the Child (CRC), which hold that all children have a right to protection from economic exploitation and work that may create interference in their education, health, and development. Among the initiatives of India, the first attempt was the Factories Act, 1948, which provided clear definitions of age limits and narrowed the range of working hours and shifts, as well as conditions under which children and adolescents would be allowed to work in factories. These protections were subsequently carried over to the Plantation Labor Act, 1951, the Mines Act, 1952, and the Merchant Shipping Act, 1958, each banning child labor below certain ages and providing safety and health protection to children and adolescent workers.

This was followed by a slight improvement in child labor laws, such as the Motor Transport Workers Act, 1961, and the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, which restricted child labor in hazardous and exploitative occupations through periodic medical fitness certificates, working hours, and rest conditions. Realizing the disjointed and generally

ineffective nature of these piecemeal laws, the Government of India introduced a more holistic national measure, the Child Labour (Prohibition and Regulation) Act of 1986. It strictly prohibits child labor in dangerous occupations and controls the terms of work in acceptable areas. After its commencement, it was amended repeatedly as per the need to prohibit overall child labor in India. Such a unifying approach symbolizes the strengthening of India's commitment to meeting its CRC obligations by shifting towards a rights-based combined strategy with the view of ending child labor and fostering the need for a safe and dignified childhood for every child.

The Juvenile Justice (Care and Protection of Children) Act (JJA), 2000, is an act that is in synchronization with the CRC and the United Nations Minimum Standards for Administration of Justice to Children (Beijing Rules). The CRC established the fundamental principle of the best interests of children, and no decisions involving children should be made without reference to this criterion. The Beijing Rules dictate that institutions can only be utilized as a last resort, and when community measures are not available to children. The JJA, 2000 was drafted deliberately to make India's commitments in such as well as other international instruments, authorities charged with the responsibility of enforcing this Act must take it upon themselves to ensure they safeguard and support the ideals captured in the JJA, 2000. The Act further states that no report of inquiry under this Act as to any juvenile in conflict with the law or with any child in need of care and protection shall be published in any newspaper, magazine, news-sheet, or other visual media which contains the name or address of the school or any other particulars likely to result in the identification of the juvenile or child or publish a picture of a juvenile or child.

Article 24 of the United Nations Convention on the Rights of the Child (CRC) provides that a child has the right to enjoy the highest attainable standard of health and that, therefore, a child must have the right to access adequate food and health care. India has enacted progressive legislation to promote and protect breastfeeding as a foundation for early child development and survival. Following international movements supporting the importance of breastfeeding children, the Infant Milk Foods and Feeding Bottles Bill was initially presented in the Lok Sabha in 1989. After the initial lapse, the issue continued to be a priority due to rising concerns about the aggressive marketing of breast milk substitutes.

This issue has finally led to the enactment of the Infant Milk Substitutes, Feeding Bottles, and Infant Foods (regulation of production, supply, and distribution) Act, 1992, which came into force on August 1, 1993. The provisions of the Act include protection and support of breastfeeding, regulation of marketing of infant foods and feeding bottles, and making available the safe and informed use of substitutes when feeding requirements cannot be met otherwise. This law signifies the active movement toward the achievement of the health rights of infants and young children as guaranteed in the CRC by discouraging attempts to commercialize breastfeeding and ensuring informed, health-based choices about early childhood nutrition.

Article 34 of the CRC directs State parties to take measures to protect children against inappropriate sexual activities and exploitation. India has made drastic but expanding efforts to address child pornography and sexual offences against children. Previously, the Indian Penal Code (IPC, 1860), Indian Post Office Act (1898), and Indecent Representation of Women (Prohibition) Act (1986) were used to prosecute offences related to obscene materials. However, such laws were narrow in their application as they did not extend to audio, digital, and simulated materials as envisaged by international standards. Although the Information Technology Act, 2000, criminalizes the transmission of obscene materials in electronic media, it did not initially include any specific reference to child pornography. One significant advancement was the establishment of the Goa Children Act, 2003, which, in a first-of-its-kind move, connected child exploitation and tourism, criminalizing acts of soliciting, promoting, or facilitating the commercial sexual exploitation of children, including via digital media and intermediaries.

India further reinforced its legal architecture by amending the Information Technology Act in 2008 with the insertion of Section 76B, which directly criminalizes publishing, transmitting, viewing, downloading, and sharing electronic content carrying images of children in sexually explicit situations. In this section, very serious penalties are provided, such as imprisonment of not more than five years in the case of a first conviction and not more than seven years in the case of a second conviction, and large fines. The most elaborate step was the enactment of the Protection of Children against Sexual Offences (POCSO) Act, 2012, which first defined a child as any person below the age of 18 years and second offered a more specific provision on a wide range of sexual crimes committed against a child (i.e., assault, harassment, and pornography). The graded

punishment provided by POCSO is dependent on the gravity of the offence, but the judicial process is child-friendly, as made known by the holistic protective approach of the CRC.

Furthermore, the legal framework in India on adoption and guardianship is uneven and requires effective harmonization, taking into account the provisions of Articles 20 and 21 of the CRC, which point out the right of the child to have special protection and the right to possess a legal identity. While the Hindu community is covered by the Hindu Adoption and Maintenance Act, 1956, other religious communities such as Muslims, Christians, and Parsees lack adoption legislation and are forced to seek assistance from the Guardians and Wards Act, 1890, which does not enable adoption with attachments of inheritance rights. The lack of such legal uniformity has an impact on the long-term protection, identity, and stability of children in guardianship or adoption, especially in inter-country adoption practices. The absence of a universal civil code on adoption and guardianship also serves as an impediment to the potential fulfillment of the CRC, and thus equal rights and protection under the law in society, without regard to community and background.

India responded to the alarming trends of sex-selective abortions and decreasing sex ratios of the female child directly by enacting legislation to comply with its Article 6, CRC obligations, which states that all children have an inherent right to life, and Article 2, which stipulates that States must ensure rights without discrimination of any kind, including on the basis of sex. In response to the profound gender discrimination that denies girls their right to be born, the Government of India passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994 (now called the Pre-Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act). This legislation was a result of civil society pressure and societal outrage over the sexual abuse of prenatal technologies to identify and abort female fetuses. It makes sex selection, either pre- or post-conception, a crime, prevents advertisements of such procedures, and states that the breach of it is cognizable, non-bailable, and non-compoundable under Section 27.

To overcome loopholes and enhance enforcement, the Act was massively extended in 2002 and 2003, reinforcing India's adherence to the CRC ideals. The amendments added Sections 3A

and 3B, according to which no specialist or expert in fertility may perform sex selection on embryos, gametes, or other reproductive material. The sale of ultrasound machines and other diagnostic equipment where sex can be determined is highly limited to only registered parties under the Act. Moreover, Section 16A calls for the establishment of the State and Union Territory Supervisory Boards, which had to promote public awareness against sex selection and correct implementation by the monitoring authorities. The amendments also stipulate strict punishment, such as a three-year jail term and fines of up to 50,000 rupees, and grant State Medical Councils the power to suspend or cancel the registrations of medical professionals committing such crimes. Criminalizing sex selection, as well as putting regulatory measures in diagnostic technology, has been an important step taken by India to secure gender equality at birth and fulfill the rights of the child according to the CRC, which requires equal right to life, good health, and protection. Nevertheless, it is important to bring these laws into practical safeguards for the girl child in the entire country through proper implementation and sensitization.

The age of recruitment into armed forces is one of the central issues of child rights when it comes to the question of protection against the involvement in armed conflicts at early ages, which is defined by Article 38 of the CRC and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC). Although Article 51A of the Indian Constitution refers to all citizens and their responsibility to provide a defence of the nation, there is no mention in that particular article that sets an age limit for joining the military. On the same note, there is the National Service Act of 1972, which establishes mandatory national service without stipulating the minimum age that a citizen can be recruited for national service. However, India does not presently mandate conscription, and it has historically been stated that enlistment in the Indian Armed Forces is voluntary and is not discriminated against on the premises of caste, faith, or area of origin.

Earlier, the Indian Army had a voluntary recruitment age of 16 years, and the recruit would be given basic army training for up to 2.5 years, which would bring the total time of operational commencement to more than 18 years when the recruit joins regular service. This policy was recognized during the negotiations for the OPAC by Indian representatives in 1998. In June 2004, India increased the joining age to 17 years and 6 months; however, even after this development,

the legislations (Army Act, 1950, Air Force Act, 1950, Navy Act 1957) governing armed forces in India do not codify a particular compulsory age of enrollment.

In declaring their ratification of the Optional Protocol in November 2005, India declared that it considered the minimum recruitment age to be 16 years, but set out clearly that no personnel were ever deployed to operational areas until the age of 18, in compliance with the requirement in the Protocol not to enlist or use children in armed conflict. Although the official practice provided by India corresponds to the minimum standard of OPAC, the lack of a legislated recruitment age and the inconsistency between the official statements and the actual practices indicate that further legal clarity and compliance with international safeguarding of children practices are necessary so that no child is subjected to military recruitment or armed conflict earlier than is necessary.

Although the two codes, namely the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC), were not established as child-specific laws, they contain vital sources of law that are used to guarantee the safety of children and their welfare in India, thus ensuring India's compliance with the CRC. The IPC, which came into force in 1860, has some clauses that deal specifically with crimes against children: infanticide, abandonment of the child (Section 317), exploitation of a child to beg (Section 363A), kidnapping (Sections 360-367), trafficking a person into prostitution (Sections 366A, 372), sexual exploitation (Section 364), and white slavery (Section 366). Such provisions reflect Article 19 of the CRC, which requires states to secure children against all means of physical or mental violence, abuse, neglect, and exploitation. The IPC additionally renders Foeticide and Infanticide (Sections 315 and 316) security and gives cognizance to the criminal act against children by the caregiver or those in authority.

The IPC also acknowledges the changing capabilities and accountability of children. Section 82 presumes that a child below the age of seven years is not a criminal, whereas Section 83 accords limited immunity to children aged 7 to 12 years depending on their maturity. Where corporal punishment is used, Sections 88 and 89 have been used to defend acts of corporal punishment by teachers that are done in good faith and with the consent of the guardian. However, several states are questioning such an interpretation as being incompatible with the CRC obligation to ensure protection against all forms of violence, including corporal punishment.

These safeguards are supplemented by procedural safeguards provided in the Criminal Procedure Code (CrPC), 1973. Section 27 expresses the need that children aged less than 16 years, who are charged with offences that are not punishable with death or life imprisonment, should be tried by the courts that are prescribed under the juvenile laws, absolutely in harmony with the CRC Article 40, which provides that children are entitled to a distinct, child-friendly justice system. Section 125-126 of the CrPC stipulate that children should be given maintenance, which is in response to Article 27 of the CRC, which touches on the right to an adequate standard of living for children. Section 360 provides release on probation or admonition, and Section 448 provides that bonds secured only by sureties shall be accepted in matters touching minors, thus making judicial proceedings more humane and child-friendly.

Collectively, the two pieces of legislation IPC and CrPC are part of a larger framework of law that protects the rights of children to be free of abuse, neglect, exploitation, and criminalization and reaffirms India's commitment, in accordance with the provisions of the Convention on the Rights of the Child, to place the best interest of the child as one of their primary concerns.

The Government of India has adopted a holistic, multisectoral approach to the physical, mental, and social development of its children and has implemented 125+ schemes and programs by 13+ Ministries and Departments. This pledge was later codified into the National Policy on Children, 1974, which restated the commitments in the Indian Constitution and identified children as a "highly valuable resource to the nation." The Policy stated that it was the responsibility of the State to ensure that children were given adequate services before and after birth and during their developmental years to help support their holistic development.

The Policy stressed the importance of gradually enlarging child welfare services so that all children had the opportunity to enjoy optimum conditions of balanced development within a reasonable period. The Government agreed to open programs to cover healthcare, nutrition, education, protection against exploitation and cruelty, and other important aspects of child development, as outlined in CRC Articles 6, 24, 27, and 28, which guarantee the right to survival, health, standard of living, and education, respectively. This strategic outlook highlights India's

commitment to promoting the best interests of every child as a central priority in national planning and policy actions.

Realizing that child labor cannot be eradicated by legislation alone, the Government of India, in August 1987, unleashed a three-pronged National Policy on Child Labour. The policy is in line with Article 32 of the CRC, which requires states to guard children against economic exploitation and expose them to risky labor. The Legislative Action Plan is one of the major components of this policy, where a Child Labour Technical Advisory Committee advises the Central Government on how to increase the list of prohibited occupations and processes under the Child Labour (Prohibition and Regulation) Act, 1986.

India's National Health Policy is also in accordance with its other efforts as stipulated in its commitment to the Convention on the Rights of the Child, particularly Article 24, which guarantees the right of every child to the enjoyment of the highest attainable standard of health. Among the programs introduced by this policy was the building of a chain of primary health centers (PHCs) across the country and initiation of special immunization campaigns against diseases that cause a risk resulting in death, such as meningitis, tetanus, chickenpox, and polio.

Although several obstacles continue to exist, including low awareness levels, unwillingness of health workers to work in remote settings, and socio-economic disadvantages, these efforts have already resulted in objective improvements in children's health outcomes. India took a more aggressive approach by adopting a new National Health Policy in 2002 that established even more ambitious targets to eradicate polio and leprosy, halt the spread of HIV/AIDS, and reduce death rates in the areas of tuberculosis, malaria, and water-borne diseases. Initiatives such as Pulse Polio demonstrate the importance that India places on the health of children as a matter of national concern, in keeping with its universal declaration of human rights.

Following the principles of the CRC, the Government of India implemented a Charter of Children in 2003, reiterating the commitment to children's rights to survive, health, nutrition, education, equality, protection, and development. The Charter guarantees children's rights to identity, freedom, expression, family life, and freedom from economic exploitation. It is also sensitive to the unique situations of children against hardship, including children with disabilities,

children of marginalized communities, and those affected by violence or conflict, as a commendable approach to child welfare and protection in a broad sense.

To convert this vision into practical objectives, the National Plan of Action (NPA) was developed that addresses the needs of more than 300 million children. The NPA gives priority areas such as health, nutrition, education, sanitation, and environment and offers a time limited structure to carry out child rights in India. It also urges States and Union Territories to come up with State specific implementation plans of action of children (SPAC) to bridge regional gaps. Monitoring and evaluation is vested in a powerful inter-ministerial committee under the Department of Women and Child Development (DWCD) and is thus nationally accountable and quantifiable in terms of progress in child rights.

The National Policy on Persons with Disabilities 2006 supports the principle of non discrimination of CRC by acknowledging the child with disability to have the right to care, protection and equal opportunity. It guarantees their right to live with dignity and equality by provision of inclusive education services, healthcare, vocational training, and special rehabilitation provisions. The policy too takes note of the special needs of children with severe disabilities more so their right to special care and safeguards based on enabling environment as per the national laws and international standards of child rights.

The Government of India has taken up a holistic and multi dimensional approach toward ensuring promotion and protection of child rights as guided by constitutional provisions, Five Year Plans, and its international commitments through the Convention on the Rights of the Child (CRC). These Plans raised concern over the child welfare, established cooperation with voluntary bodies, with certain emphasis on health, nutrition, and education. Other historic programs such as the Integrated Child Development Services (ICDS), established in 1975, also tried to support children under age six and pregnant mothers in a comprehensive manner. Subsequent plans came up with special initiatives of children with disabilities, immunization campaigns, preschool education, and girl child enrolment.

India took another step towards its commitment by incorporating a Charter of Children in 2003, which stipulated various rights including; the right to survival, development, protection and

participation. The National Plan of Action (NPA) on children, gave time-bound objectives in aspects of health, education, sanitation, and protection and motivated states to formulate localized State Plans of Action on Children (SPACs). National Policy for Persons with Disabilities (2006) was aimed at meeting special needs of children with disabilities, considering access to care, education and vocational training. The Eleventh Five-Year Plan (2007-12) pursued a rights-based approach to ECCE, and suggested amending the constitution to recognise ECCE. To make monitoring systematic, the National Commission for Protection of Child Rights (NCPCR) was established in 2007 through a Parliamentary Act, which is mandated to ensure laws and policies comply with CRC and address violations of the rights. These initiatives are accompanied by other human rights commissions, and indicate gradual achievement of child rights in India with a combined policy, legislative frameworks and institutional support.

Conclusion:

The effort to ensure the protection of child rights, as enshrined in the UN Convention on the Rights of the Child (CRC), has continued to be strengthened nationally, through a comprehensive legal, institutional, and policy regime in India. The country has made considerable efforts since independence to ensure the survival, development, protection and participation of children. Other important interventions are specific welfare programmes, holistic health and schooling efforts, and shield-like laws to protect the vulnerable and the marginalized children. The establishment of such institutions as the National Commission for Protection of Child Rights (NCPCR) adds further weight to the commitment of the nation towards a rights-based approach to child welfare. Although there have always been ongoing issues like poverty, regional inequalities and implementation gaps, the increased practice of incorporating the principle of the best interest of the child into all policies and programmes demonstrates a positive and dynamic commitment. India should keep their pace in the CRC commitments and focus on the implementation, surveillance, and involvement of the community so that every child can develop within an empowering, protectable, and fair world.

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