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Fundamentals of Child Rights

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Abstract

India is home to about four hundred and forty million children, that is, 42 per cent of the total population. They are our most valuable asset and a significant human resource. The prosperity of our country depends indeed in their holistic development, that is, physical, mental, social and economic development. India has adopted various child-friendly policies, laws and programmes for the all-round development of children. We have the National Policy for Children which obligates on the State to provide adequate services to children for their full physical, mental and social development. The National Charter for Children emphasises the Government of India's commitment to children's rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, right to a family and right to be protected from economic exploitation and all forms of abuse. The National Commission for Protection of Child Rights has been set up by an Act of Parliament in 2007 for proper enforcement of children's rights and effective implementation of laws and programmes relating to children. Several States in the country have also set up similar Commissions.

There is no issue more vital to humanity and its future than enabling children to realise their full potential. The needs and the rights of the children all around the world must be accorded top priority in all developmental efforts.

Children constitute the principal asset of any country. The prosperity of a country largely depends on the all-round development of its children and young people. The

protection of children has emerged as a major concern all over the world, especially against the backdrop of growing incidences of gross abuse and exploitation of children in many

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ways. Trafficking of children and young people, and child labour are forms of exploitation of children. It requires greater attention and multi-dimensional approach towards achieving all-round development of children and also to protect the children from abuse, trafficking and exploitation.

ROLE OF THE UNITED NATIONS

The principles that childhood is entitled to special care, assistance and safeguards were for the first time stated in the Geneva Declaration on the Rights of the Child in 1924. It was not until recently that children have become a constituency in their own right. A number of Government laws and human rights decrees have been created to advocate more equitable treatment of children under existing laws and for a more equitable share of resources and opportunities.

The first major step, on behalf of children, taken by the United

Nations was the creation of the United Nations Children's Fund (UNICEF) in December 1946. Two years later, the Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948. The provisions of that Declaration and its two International Covenants on human rights – International Covenant on Civil and Political Rights and the

International Covenant on Economic, Social and Cultural Rights – adopted in 1966, recognised that child rights need protection. The Declaration on the Rights of the Child in 1959 was United Nation's first Statement devoted exclusively to the rights of children, but it served as a moral rather than a legally binding framework. The special plight of girls was addressed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by UN in 1979.

THE CONVENTION ON RIGHTS OF THE CHILD

The Convention on Rights of the Child (CRC) is the first legally binding international instrument to incorporate the full range of human rights – civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people below the age of 18 years often

need special care and protection that adults do not. The leaders also wanted to make sure that the world recognised that children have human rights too. The objective of the Convention is to give every child the right to survival and development in a healthy and congenial environment. The Convention sets out these rights in 54 articles and two Optional Protocols to the CRC, namely, (i) on the involvement of children in armed conflict, and (ii) on the sale of children, child prostitution and child pornography. It spells out the basic human rights that children everywhere have the right to survival; to develop to the fullest; to protection from harmful influence, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services. By agreeing to undertake the obligations of the Convention (by ratifying or acceding to it), national Governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States party to the Convention are

obliged to develop and undertake all actions and policies in the light of the best interests of the child.

The Convention on the Rights of the Child (CRC) was adopted by the United Nations in 1989. India is a signatory to the Convention. The Convention was acceded by India on December 11, 1992. India has also signed and ratified both the Optional Protocols to the CRC in 2005.

India is also party to the Millennium Development Goals which *inter alia* includes achievement of universal primary education by 2015 when children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and the South Asian Association for Regional Cooperation (SAARC) Conventions on Child Welfare and Combating Trafficking of Women and Children in SAARC Region.

INDIA'S SCENARIO

India has the largest child population in the world. It is home to about 440 million children which is 42 per cent of the total population. The founding fathers of the Constitution were deeply concerned for the protection and welfare of children. Several constitutional provisions (Fundamental Rights and Directive Principles) towards welfare of the children have suitably been incorporated in the Constitution of India. Some of the provisions laid down by the Constitution are:

- Article 14 provides that the State shall not deny to any person equality before the law or the equal

protection of the laws within the territory of India.

- Article 15(3) provides that nothing in this article shall prevent the State from making any special provision for women and children.
- Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21A directs that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
- Article 23 prohibits trafficking of human beings and forced labour.
- Article 24 prohibits employment of children below the age of fourteen years in factories, mines or any other hazardous occupation.
- Articles 25 to 28 provide freedom of conscience, and free profession, practice and propagation of religion.
- Article 39(e) and (f) provide that the State shall, in particular, direct its policy towards securing to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter vocations unsuited to their age or strength and that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected

against exploitation and against moral and material abandonment.

- Article 45 envisages that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

In pursuance of the spirit of these constitutional provisions, several laws have been enacted by our Parliament with a view to protecting and securing the all-round development of children:

- The Guardian and Wards Act, 1890.
- The Young Persons (Harmful Publications) Act, 1956.
- The Immoral Traffic (Prevention) Act, 1956.
- The Child Labour (Prohibition and Regulation) Act, 1986.
- The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992.
- The Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994.
- The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- The Juvenile Justice (Care and Protection of Children) Act, 2000.
- The Commission for Protection of Child Rights Act, 2005.
- The Prohibition of Child Marriage Act, 2006.
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.

NATIONAL POLICY FOR CHILDREN

The National Policy for Children was adopted on August 22, 1974. The Policy lays down that the State shall provide adequate services for children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested in the Policy include, amongst others, a comprehensive health programme, supplementary nutrition for mothers and children, free and compulsory education for all children up to the age of 14 years, promotion of physical education and recreational activities, special consideration for children of weaker sections like SCs and STs, prevention of exploitation of children, etc.

NATIONAL CHARTER FOR CHILDREN

The Government adopted the National Charter for Children which was notified in the Gazette of India on February 9, 2004. The National Charter is a statement of intent embodying the Government's agenda for children. It emphasises the Government of India's commitment to children's rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, empowering adolescents, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, right to a family and right to be protected from economic exploitation and all forms of abuse. It also provides for protection

of children in difficult circumstances, children with disabilities, children from marginalised and disadvantaged communities, and child victims. The Charter while stipulating the duties of the State and the community towards children, emphasises the duties of children towards family, society and the nation.

NATIONAL PLAN OF ACTION FOR CHILDREN 2005

The National Plan of Action for Children 2005, which has been prepared in consultation with concerned Ministries/Departments, States/Union territory Governments, NGOs and experts includes goals and objectives, strategies and activities for improving nutritional status of children, reducing Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR), increasing enrolment ratio and reducing dropout rates, universalisation of primary education, increasing coverage for immunisation, etc.

NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

A National Commission for Protection of Child Rights was set up on March 5, 2007 in accordance with the provisions of the Commission for Protection of the Child Rights Act, 2005 for proper enforcement of children's rights and effective implementation of laws and programmes relating to children. The Commission, a statutory body, deals with all matters relating to children. As per the Act, the Members of the

Commission have to be the experts in the field of child health, education, child care and development, juvenile justice, children with disabilities, elimination of child labour, child psychology or sociology and laws relating to children.

The functions of the Commission *inter alia* are to (i) investigate and examine all matters relating to the safeguards provided for children under the existing laws; (ii) present to the Central Government, annually and at such other intervals as the Commission may deem fit, reports upon the working of those safeguards; and (iii) inquire into complaints and take *suo moto* notice of matters relating to deprivation of child's rights, non-implementation of laws relating to children. The Commission also enjoys the powers which *inter alia* include the summoning and enforcing the attendance of any person and examining him on oath; requisitioning any public record or copy thereof from any court or office; and issuing commissions for the examination of witnesses and documents.

In accordance with the Act, the States of Delhi, Goa, Karnataka, Maharashtra and Sikkim have set up State Commissions for Protection of Child Rights.

ACHIEVEMENT OF UNIVERSAL PRIMARY EDUCATION

To achieve universal primary education, India has to increase the primary school enrolment rate to 100

per cent by 2015 and wipe out at the same time the dropouts. *Universal primary education is within our reach as the Net Enrolment Ratio (NER) in primary education is likely to reach the 100 per cent mark for both boys and girls before 2015.* For girls, it stands at 90.9 per cent in 2005 showing an increase of nearly 12.7 percentage points in the six years since the year 2000. The corresponding increase for boys is only about 2 percentage points. The latest flash statistics of the District Information System for Education (DISE) 2009-10 shows the Gender Parity Index (enrolment) at 0.94 for primary education and the overall NER at 98.28 per cent against 87.4 per cent in 2000 indicates that 100 per cent NER should be achievable before 2015.

THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009

The Right of Children to Free and Compulsory Education Act, 2009 is a watershed legislation providing children in 6-14 age group a Fundamental Right to free and compulsory education till completion of Class VIII. This Act, which is a consequential legislation of Article 21A of the Constitution would pave the way for all children, especially those belonging to disadvantaged groups and weaker sections, the opportunity to pursue and complete elementary education of acceptable quality. The Act casts a statutory obligation on the Government – Central Government,

State Government and local authority, to ensure that every child exercises his or her Fundamental Right to be educated in a school which conforms to the minimum standards specified in the Act.

The Act is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and human society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

Constitution of a School Management Committee in every Government and Government-aided school marks a significant step in ensuring that the most important stakeholder in a child's education viz., the parents or guardians have an important role in monitoring the functioning of the school. Every State is required to lay down a curriculum and evaluation procedure taking into consideration various factors, such as, conformity to the values enshrined in the Constitution, building up of child's knowledge, potentiality and talent, making the child free of fear, trauma and anxiety and Comprehensive and Continuous Evaluation (CCE) of child's understanding of knowledge and his ability to apply the same.

The Act envisages a crucial role for teachers in conduct of the prescribed curriculum, to assess the learning ability of each child and, if required, supplement it with additional instructions. The Act makes special provision for bringing hitherto non-enrolled and out-of-school children into the mainstream of elementary education. Every such child would be admitted in an age appropriate class and provided special training to come at par with other children. Such children would have the right to complete elementary education even after the age of 14 years.

PREVENTION OF TRAFFICKING OF WOMEN AND CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION

Trafficking in human beings is an organised crime violating all basic human rights. India has emerged as a source, transit and destination country. It is estimated that there are 3 million sex workers in India, of which 40 per cent constitute children, as young as 10 years old. Most often these victims are trafficked through means like duping, luring, fake marriages, abducting, kidnapping and manipulating social and economic vulnerabilities and sold to brothels where they are continuously subjected to abuse, violence and exploitation by perpetrators of crime.

The right against exploitation, a Fundamental Right guaranteed by the Constitution, is a high priority item for the Government, which is reflected in various legislations and

policy documents. The principal legislation Immoral Traffic Prevention Act, 1956 lays down provisions for providing stringent punishment to the perpetrators of crime. It was amended in 1978 and again in 1986 for better implementation, enhanced scope, and more stringent penalties. In addition, the Indian Penal Code also provides provisions for crimes related to trafficking. India is also signatory to various international and regional conventions such as *UN Convention against Transnational Organized Crime with its Protocol, to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; the SAARC Convention on Preventing and Combating Trafficking of Women and Children and Prostitution; the Convention on the Elimination of all Forms of Discrimination Against Women and the Convention on the Rights of the Child*. The Government of India has adopted a multi-pronged approach to prevent and combat trafficking which includes legislative measures, enforcement, prevention of trafficking, rescue and rehabilitation, reintegration and repatriation of cross-border trafficked victims.

PROHIBITION OF CHILD MARRIAGE

Child marriage is a social evil that robs children of their childhood and impedes their holistic development. Child marriage has continued to prevail in spite of seventy-eight years of enactment of the Child Marriage Restraint Act, 1929 which has been replaced by the Prohibition

of Child Marriage Act, 2006. The amended Act has forward looking provisions and emphasises more on prohibition rather than prevention of child marriages. Besides, it has provision for relief to the victims of child marriage as well as enhanced punishments for all those who abet and solemnise such a marriage. Under Section 19(1) and Section 16(1) of the Prohibition of Child Marriage Act, 2006, State Governments are required to frame rules and appoint Prohibition Officers. The Ministry of Women and Child Development (MWCD) is conducting training and sensitisation workshops for various stakeholders on the provisions in the Act.

CHILD LABOUR

An estimated 158 million children aged 5-14 are engaged in child labour - one in six children in the world. Millions of children are engaged in hazardous situations or conditions, such as working in mines, working with chemicals and pesticides in agriculture or working with dangerous machinery. They are everywhere but invisible, toiling as domestic servants in homes, labouring behind the walls of workshops, hidden from view in plantations. Hazardous and exploitative child labour violates child rights as enshrined in the Convention on the Rights of the Child.

In India, the problem of child labour poses a great challenge before the nation. According to Census 2001, there are 1.26 crore economically active children in the age-group of

5-14 years, which includes about 1.2 million children working in hazardous conditions. The Government has taken various pro-active measures to tackle this problem. The Child Labour (Prohibition and Regulation) Act enacted in 1986 prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The National Policy on Child Labour formulated in 1987 seeks to adopt a gradual and sequential approach with a focus on rehabilitation of children working in hazardous occupations and processes. The National Child Labour Project Scheme (NCLP) was launched in 1988 in 9 districts of high child labour endemicity with the objective of running of special schools for child labour withdrawn from work. In the special schools, these children are provided formal/non-formal education along with vocational training, supplementary nutrition and regular health checkups so as to prepare them to join regular mainstream schools. The coverage of the NCLP Scheme increased to 250 districts during the Tenth Plan.

The Eleventh Plan envisages to expand the NCLP scheme to:

- cover all the remaining districts having a reasonable number of working children in the hazardous category;
- conduct child labour survey twice in the plan period to have correct estimate of the child labour in the country;

- develop standard curricula for the special schools for providing uniformity and linkage with regular schools;
- make vocational training, already a component of NCLP, more meaningful by indentifying those skills that have marketability; and strengthen health component in special schools.

INTRODUCTION OF WHO GROWTH STANDARDS IN ICDS

The World Health Organisation (WHO) based on the results of an intensive study initiated in 1997 in six countries, including India, has developed New International Standards for assessing the physical growth, nutritional status and motor development of children from birth to 5 years age. The Ministry of Women and Child Development and the Ministry of Health have adopted the New WHO Child Growth Standards in India on 15 August 2008 for monitoring the Growth of Children through ICDS and National Rural Health Mission. Through these standards, correct classification of children can be made as per international norms.

RAJIV GANDHI NATIONAL CRECHE SCHEME FOR THE CHILDREN OF WORKING MOTHERS

The Rajiv Gandhi National Crèche Scheme for the Children of Working Mothers was launched from January 1, 2006 to provide crèche services to the children of age group of 0 to 6



years, which includes supplementary nutrition, emergency medicines and contingency. These crèches are operationalised through the Central Social Welfare Board, the Indian Council for Child Welfare and the *Bhartiya Adim Jati Sevak Sangh*. The priority is given to uncovered districts/areas and tribal areas while extending the Scheme to maintain balance regional coverage. So far, about 31,718 creches have been sanctioned.

SCHEME FOR WELFARE OF WORKING CHILDREN IN NEED OF CARE AND PROTECTION

The MWCD is also implementing the Scheme for Welfare of Working Children in Need of Care and Protection since 2004-05 with the objective to provide opportunities including non-formal education, vocational training, etc., to working children to facilitate their entry/re-entry into mainstream education in cases where they have either not attended any learning

system or where for some reasons their education has been discontinued with a view to preventing their continued future exploitation. The programme is to lend support to projects in urban areas, not already covered by the existing schemes of the Ministry of Labour and Employment, which provide support for the wholesome development of child workers and potential child workers especially those who have none or ineffective family support such as children of slum/pavement dwellers/drug addicts, children living on railway platforms/along railway lines, children working in shops, *dhabas*, mechanic shops, etc., children engaged as domestic workers, children whose parents are in jail, children of migrant labourers/sex workers, leprosy patients, etc.

The programme focuses on measures such as (a) facilitating introduction to/return to the mainstream education system as children at study are not children at work; (b) counselling to parents, heads of families, relatives of the targeted children so as to prevent their exploitation; and (c) give vocational training whenever necessary.

INTEGRATED CHILD PROTECTION SCHEME

The Ministry of Women and Child Development has formulated the Integrated Child Protection Scheme (ICPS) by merging the components of three of the existing Schemes, namely, (i) the Programme for Juvenile Justice;

(ii) the Integrated Programme for Street Children (including Childline Services); and (iii) the Scheme for Assistance to Homes [Shishu Greh], to promote in-country adoption and has proposed new interventions to cover the gaps in the existing schemes. The objectives of the Scheme are to contribute to the improvement in the well-being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children. These will be achieved by: (i) improved access to and quality of child protection services; (ii) raised public awareness about the reality of child rights, situation and protection in India; (iii) clearly articulated responsibilities and enforced accountability for child protection; (iv) established and functioning structures at all Government levels for delivery of statutory and support services to children in difficult circumstances; and (v) introduction of operational evidence-based monitoring and evaluation. The ICPS focuses its activities on children in need of care and protection and children in conflict and contact with the law as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006.

CHILDLINE SERVICES

The MWCD launched Childline Service during the year 1998-99. The childline is a 24-hour free phone service, which

can be accessed by a child in distress or an adult on his behalf by dialing the number 1098 on telephone. Childline provides emergency assistance to the child and subsequently based upon the child's need, the child is referred to an appropriate organisation for long-term followup and care. The service focuses on the needs of children living alone on the streets, child labourers working in unorganised sector, domestic workers and sexually abused children. This service is now available in 83 cities but any child can use the service in case of an emergency.

CENTRAL ADOPTION RESOURCE AGENCY

The Central Adoption Resource Agency (CARA) was set up in 1990 and was subsequently registered under the Societies Registration Act, 1860 on March 18, 1999 to act as an autonomous body in the matters relating to adoption. It has been designated as the Central Authority by the Ministry of Social Justice and Empowerment on July 17, 2003 for the implementation of the Hague Convention on Protection of Children and Cooperation in respect of inter-country adoption (1993). It regulates and monitors the working of recognised social/child welfare agencies engaged in in-country as well as inter-country adoptions. The CARA grants recognition to Indian Placement Agencies on the recommendation of the State Government for processing inter-country adoption cases. It also enlists foreign agencies that are engaged in sponsoring applications of

foreign prospective adoptive parents. The CARA is also responsible for furthering the cause of adoption through advocacy, sensitisation and capacity-building programmes.

NATIONAL INSTITUTE OF PUBLIC COOPERATION AND CHILD DEVELOPMENT

Established in 1966, the National Institute of Public Cooperation and Child Development (NIPCCD) is an autonomous organisation engaged in promoting voluntary action, research, training and documentation in the overall domain of child development and welfare, women empowerment and related issues. The Institute functions under the administrative control of the Ministry of Women and Child Development. In order to cater to the region-specific requirement of the country, the Institute, over a period of time, has

established four regional centres at Guwahati, Bangalore, Lucknow and Indore.

CONCLUSION

All principal organs of the State viz., the Executive, the Legislature and the Judiciary in India have taken several proactive measures to put in place an exhaustive legal and policy framework for fulfilling the Convention on the Rights of the Child. Several schemes and programmes have been initiated to address issues relating to children and a lot more is still on the anvil. The hallmark for success and the biggest challenge however, is to ensure proper implementation of all such provisions and interventions. Besides, the governmental efforts, the NGO's and other civil society organisations such as the media as well as the corporate sector need to come forward for providing a better life to the children of our country.

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