

HUMAN RIGHTS WITH REFERENCE TO JUVENILE JUSTICE SYSTEM IN INDIA

SUB THEME: VIOLATION OF HUMAN RIGHTS IN CHILD CARE INSTITUTIONS

Geeta Kumari

Research Scholar (Author), Department of Laws BPSMV, Khanpur Kalan, Sonipat (Haryana)

Dr. Alka Bharti (Co-Author)

Assistant Professor, Department of Laws BPSMV, Khanpurkalan, Sonipat (Haryana)

ABSTRACT

The paper focuses on juvenile i.e., a person under 18 years of age. Over the years there have been changes in juvenile laws due to various factors that affect them and also due to the increase in the number of delinquents. Institutional care for children can be seen as an alternative form of care to provide in an organized manner for the best interest and protection of a child. It is essential therefore, that this alternative care responds to the physical, psychological, emotional, social, moral, ethical and spiritual needs of children in an appropriate manner.

Human rights are those rights which are necessary for survival of human being in a dignified manner in the society. These rights are inherent, inalienable, universal and dynamic in nature. As part of the framework of human rights law, all human rights are indivisible, interrelated and interdependent. Understanding this framework is important to promote, protect and realize children's rights. Despite significant efforts to improve children's rights, vulnerable children in the child care institutions are being abused. Children who are victim of abuse, exploitation and discrimination, and who suffer exclusion from education, health care and other vital services, are largely overlooked by international and national developmental efforts that could greatly improve their lives. The National Commission for Protection of Child Rights in 2018-19 in which more than 7,000 Child Care Institutions were surveyed and found that there was not a single Child Care Institution in the country by 100 percent compliant with the provisions of the JJ Act 2015.

Keywords:- Human rights, Child care institutions, Juvenile, National commission.

INTRODUCTION

Children are the guardians of sovereignty, the rule of law, justice, freedom, equality, fraternity and ultimately national and international peace and security. These are the ones who could be the embodiment of our ideals, our wishes, our ambitions, our hopes for the future. They are the 'future shoulders' in the form of great philosophers, rulers, scientists, politicians, able legislators, administrators, teachers, judges, technologists, industrialists, engineers, workers, planners on which the country would stand. Nature has given some basic rights to everyone including children. These basic rights were given to human being from the beginning. Humans have rights from the fetal stage. The fetus in the mother's womb is the starting point

since then certain basic human rights are guaranteed. These rights are inherent in all of them. The State cannot give or cancel these rights, which are basic human rights. The State must recognize and guarantee these rights¹.

Human Rights Instruments specific to the rights of the child: The 1924 Declaration of the Rights of the Child, adopted by the fifth assembly of the League of Nations, can be seen as the first international instrument dealing with children's rights.

Millions of children around the world are exploited, abused and discriminated against. These children include laborer's children affected by armed conflict, sexually exploited children, children in conflict with the law or in the care of the state, as well as children living on the streets, who dealing with disabilities, or suffering from discrimination because of their care, religious status or ethnic minority².

Children received welfare measures. It was only during the twentieth century that the concept of children's rights emerged. The right approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. Children's unique vulnerability makes their rights a priority within Canadian foreign policy. Canada played a central role in the negotiations that led to the adoption of the United Nations Convention on the Rights of the Child in 1989. The United Nations has designated November 20 as Universal Children's Day.

According to section 12(h) of The Protection of Human Rights Act 1993, it is the function of National Human Rights Commission to, "spread human rights literacy among various sections, of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means"³.

The Commission persuaded the University Grants Commission to introduce human rights education in the university level. As a result, human rights education is now being provided in over 35 Universities / Colleges throughout the country and also in the National Law Schools. However, when the person's status is reviewed rights education in India, one concludes that due emphasis has not been placed on the inclusion of human rights as a subject or part of the broad curriculum at school level. Despite the fact that the Commission is lying between central and state governments it seems that the government has not done much to inform the culture of human rights in young minds. The importance of encouraging a culture of Human Rights in the implicit mind of children is best represented by the UN Commission on Human Rights in its resolution 2004/71 on the regional review and follow-up to the UN Decade in relation to Human Rights Education there is a duty to include and improve Human Rights Education in the schools.⁴

¹ Available at <https://lawtimesjournal.in>

² Available at <https://www.un.org>

³ Available at <https://www.mha.gov.in>

⁴ Available at <https://nhrc.nic.in>

Research Method

This paper adopts a doctrinal approach to examine and evaluate the Human rights with respect to juvenile justice system in India. The method in this study entails a detailed literature search to systematically evaluate the legal implications, regulations, arguments and policy regarding the nature of human right. This study also engages with normative and philosophical aspects of human rights.

Who is a child?

The 1989 Convention on the Rights of the Child defines the term child as everyone under the age of eighteen years unless, under the law applicable to the child, majority is to be attained earlier.

In India, the Census of India and the Constitution of India define persons under the age of fourteen as children. The Children's Act defines a child as someone who has not reached the age of 16 if a boy or 18 if a girl. The UNCRC seeks to protect children from harm, to provide for their growth and development, and to empower their participation in society. Article 42 of the Convention is a commitment to educate children and adults about child rights, but it seldom happens. Ignorance of rights puts children at greater risk of abuse, discrimination and exploitation.

HUMAN RIGHTS RELATED TO CHILD

The International Framework of Human Rights:

The United Nations set a common standard for human rights when it adopted the Universal Declaration of Human Rights in 1948. Although the Declaration is not part of binding international law, its adoption by all countries around the world gives great moral weight to the basic principle. that everyone is treated equally and with respect, regardless of nationality, place of residence, sex, national or ethnic origin, color, religion, language or any other status⁵.

Since than the United Nations has adopted many legally binding international human rights treaties and agreements, including the Convention on the Rights of the Child. These treaties are used as a framework for discussing and implementing human rights. States that choose to be bound by the principles and rights they set out become legally bound⁶.

Important Treaties on Child Rights

- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child

⁵ Available at <https://www.humanium.org>

⁶ <https://www.amnesty.org>

- The International Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination against Women
- The Convention on the Rights of Persons with Disabilities
- The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families
- The International Convention for the Protection of All Persons from Enforcement.
- human rights related to child⁷

Object Of Having Child Rights

Child's rights aim to ensure that all children have the opportunity to reach their full potential. These rights state that all children without discrimination should be able to develop fully, have access to education and health care, grow up in an appropriate environment, be aware of their rights, and participate actively in society. Rights are tool to protect child from violence and abuse⁸.

They are abandoned. They don't get a chance to step into a school. They are left to fend for themselves on the streets. They suffer from many forms of violence. They don't even have access to primary health care. They are subjected to cruel and inhumane treatments every day. They are children - innocent, young and beautiful - who are being deprived of their basic human rights.⁹

In the history of human rights, children's rights are the most upheld. The United Nations Convention on the Rights of the Child (UNCRC) defines the Rights of the Child as the minimum rights and freedoms that should be accorded to all citizens under the age of 18 regardless of race, national origin, color, sex, on language, on religion, on opinions, origin, wealth, birth status, disability, or other characteristics.

These rights include the freedom of children and their civil rights, the family environment, health care and essential welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the basic human rights to which children are entitled in four broad classifications that adequately cover the civil, political, social, economic and cultural rights of all children.¹⁰

Definition of Child Care Institution

Child Care Institution (CCI), commonly known as an orphanage, as defined under the Juvenile Justice Act, 2015, means a Children's Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialized Adoption Agency and a fitting facility which is recognized by the Act to provide care and protection to children, who are in need of such care

⁷ Available at <https://www.unicef.org>

⁸ Available at <https://www.legalserviceindia.com>

⁹ Available at <https://www.smilefoundationindia.org>

¹⁰ *ibid*

and services. Residential care and protection are provided for children in conflict with the law in Observation Homes, Special Homes and Safety Centers¹¹.

A child care institution as defined under Act JJ, 2015, Children's Home, Open Shelter, Watch House, Special Home, Place of Safety, Specialist Adoption Agency and Facility recognized under the Act to provide care and protection to children. Residential care and protection are provided for children in conflict with the law in Observation Homes, Special Homes and Places of Safety.

What is the objective of CCIs?

Observation Homes and Special Homes have an important objective and purpose for the services provided by the CCI (Child Care Institution), and hence the approach of each would be different but purpose is to protect the child from the abuses whether it is mental, physical or psychological. Place of Safety works as Observation Home or a Special Home for children between the age of 16-18 years, who are accused or found guilty of having committed heinous offences. Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment which is necessary for them. Where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, through competent authorities and duly authorized civil society organizations (CSOs). It is the important role of the State, through its competent authorities, to ensure supervision of the safety, well-being and development of any child placed in alternative care and regular review of appropriateness of the care arrangement provided.

Working of Child Care Institutions

It is the responsibility of all State Governments to provide services to children in conflict with the law as laid down under the JJ Act 2015.

The person in charge in that case should bring the matter before the JJB, and the JJB should declare the child as a child in need of care and protection. With increasing urbanization and migration to big cities, the criminal gangs operating in these cities use children as objects to commit crimes and sometimes the children themselves are involved in the crimes. Therefore, the problem of repeat offenders is increasing in cities that require special attention from the State Governments and from the caregivers in the CCIs. The objective of dealing with such children under the Juvenile Justice System should not be to punish them as criminals, but to rehabilitate them through education or therapy to live a healthy and decent life¹².

"Doli incapax" means "Incapacity of a child" this is the mental incapacity of a person for punishing a person in fault base liability cases where the conduct or act of the party is an offence reason being it is done by the person with criminal intention, knowledge or reason to believe.

¹¹ Available at <https://childhelpfoundation.in>

¹² Available at <https://blog.ipleaders.in>

Sections 82 and 83 of IPC 1860 exempt the wrongful act of the child from criminal liability. According to Section 82 of the IPC, anything done by a child below the age of seven is not an offence. However, anything done by a child above seven years of age and under twelve years of age, who has not attained sufficient maturity of understanding to consider the nature and consequences of his conduct at that time as provided, is not an offence under Section 83 of IPC, 1860¹³.

Reasons of Violation of human rights in child care institutions

The causes of violation of children's rights include violations under the Right of Children to Free and Compulsory Education Act, 2009 and violation under the Protection of Children from Sexual Offences Act, 2012.

Violations of children's rights also include displacement, violence, trafficking, child Labour, scarcity of good food, healthy environment, equal opportunities in education, water etc. Among the actions carried out by the National Commission for the Protection of Children's Rights is the conduct of summons hearings and giving instructions to concerned officials, giving recommendations to State Governments, etc. Act, 2000, the Act for the Protection of Children from Sexual Offences, 2012, the Prohibition of Child Marriage Act, 2006 and is putting schemes to protect children such as the Integrated Child Protection Scheme, etc.¹⁴

Lack of education is one of the main grounds for the violation of human rights of children. Because people are not aware about their basic human rights. They do not possess sufficient economic resources for the enjoyment of basic human rights.

SUGGESTIONS AND CONCLUSION

Child protection is the primary responsibility of the family and it must be supported by the community, government and civil societies as well. It is important that the respective roles are clearly communicated and understood by all parties in the effort or role to protect the children. Both Central and State Governments have an obligation to ensure continuum of services at all levels in the society for the benefit of the children.

A loving and caring family is the best place for the development of children. Children are best cared for in their own families and they have the right to receive family care and parenting from both parents.

Privacy and Confidentiality is also sine qua non for the rehabilitation of child in conflict of law and child in need of care and protection. Children's right to privacy and confidentiality should be protected through all stages of service delivery to them.

Non-stigmatization and non-discrimination should be the basic principle of all child care institutions. All children should be treated equally and with dignity regardless of circumstances as well as socio-economic, cultural, religious and ethnic background.

¹³ Available at <https://vikaspedia.in>

¹⁴ Available at <https://pib.gov.in>

Preventing and reducing vulnerabilities should be the aim of all the institutions. The main goal of the integrated Child Protection Scheme will be to strengthen the family's capacity to care for and protect the child in all situations.

Institutionalization should be used as a last resort after all other options have been explored. It must be a good substitute of home and family care. Planning and implementation of child protection policies and service delivery should be child-centered at all levels, to ensure that the child's best interests are protected and served.

Technical excellence and code of conduct of the service provider is also the necessary requisite for the protection of the child. Children's services should be provided by trained professional staff at all levels in every child care institution, including a cadre of social workers, psychologists, members of statutory bodies and lawyers, Boards, members of child care institutions. Professional code of conduct should be adhered by all the service providers regarding the children.

Good governance, accountability and responsibility, transparency are some important measures which must be followed by the protectors of the interest of child. An effective and efficient child protection system requires transparent management and decision-making, accountable and responsible individuals and institutions, publicizing performance reports at all service levels and all service providers, including for children itself, through the welfare of children.

REFERENCES

<https://lawtimesjournal.in>
<https://www.un.org>
<https://www.amnesty.org>
<https://www.unicef.org>
<https://www.legalserviceindia.com>
<https://www.smilefoundationindia.org>
<https://childhelpfoundation.in>
<https://vikaspedia.in>
<https://pib.gov.in>
<http://wbscps.in>
<https://www.humanium.org>
<https://nhrc.nic.in>
<https://www.mha.gov.in>