

RIGHTS OF A CHILD: THROUGH UNITED NATIONS CONVENTION ON RIGHTS OF A CHILD AND INDIAN LAWS

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ABSTRACT

This article revolves around the subject of family and international law. It seeks to understand the relevance of the United Nations Convention on the Rights of a Child, which was signed in the year 1989. This study builds around the benchmark set by the convention and its relevance in India. The researcher has built a comparison between the Convention and the legal framework in India. India, being a culturally rich country, has various personal laws governing it, the article also addresses if the personal laws become an encumbrance in securing the rights of a child. Mainly, it shall enrich the reader on the domain of the provisions of UNCRC, and their replication in Indian law. Even though, UNCRC came into being 40 years after India's independence, India's laws find mention of the rights of a child. The reason for the same remains that India's constitution influences the Universal Declaration of Human Rights which seeks to protect the rights of a child. With this article, the researcher hopes to increase the existing research on Child rights laws and enrich the reader on new facets of the protection of child rights in India.

Keywords: Welfare, Convention, Protection, State Parties, Right.

SYNOPSIS

Introduction

A child under Article 1 of the United Nations Convention on the Rights of a Child, is a person who is below the age of 18 years. This statement has been a benchmark in determining who comes under the criteria of a child. WHO has further gone ahead and classified children into sub-classifications such as adolescents, or children between the age of 10-19. The framework in India also sticks to the same zone of classification and garners a bouquet of rights to its citizens including children. The history of Child rights goes even before the UNCRC, leading to the Geneva Convention and Universal Declaration of Human Rights that classified children

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to be protected in all forms of situations, be it war or internal aggression. United Nations created UNICEF(United Nations Children's Fund) to specifically ensure that the rights of a child are taken care of everywhere. The presence of this organisation has helped various State parties to develop child rights laws to ensure the welfare of children.

This article delves into the facet of child rights laws in India, and how the guidelines given under UNCRC, to which India is a party, have incorporated it into their legal framework.

India, being a culturally diverse land, has the ambit of personal laws governing the rights of a child, adoption, etc. but there are secular legislations as well. This paper shall refer to and build on a comparative study on the same and shall understand how has India gone ahead of the benchmark given under the UNCRC.

Literature Review:

The researchers have gone through online databases such as;

- 1) **JSTOR:** It is a database that has various journals and articles from various distinguished authors on a plethora of topics of law.
- 2) **Lexis Nexus:** It is a database for cases, statutes, legislations, textbook excerpts, books, articles, etc.
- 3) **SCC Online:** It is also a database for cases, statutes, legislations, textbook excerpts, books, articles, etc.

The researchers have also reviewed various articles, international declarations, journal papers and books on the rights of a child given through International framework, such as:

- 1) **United Nations Convention on Rights of a Child¹**-This international convention on the rights of a child was signed by the United Nations General Assembly in 1989 and focuses on the essential rights of children that should be present in every country. India ratified it in 1992 and incorporated many essentials from the conventions into its child rights framework. The researcher has referred to it to explain the rights of a child as recognised by the United Nations framework.

¹ Convention on the rights of the child (1989) Treaty no. 27531. United Nations Treaty Series, 1577, pp.

2)**The Rights of a Child by Leila Seth**²-This research article talks about the UNCRC, Geneva Conventions and the genesis of child rights laws. It talks about the progress of Indian laws in view of International laws. The researcher has referred to it to explain more about UNCRC and its comparison with Indian laws.

3)**Theory of Human Rights in Perspectives in Child Rights by Abhay Vikram Singh**³-This paper talks about human rights and how child rights come under it. It also expressly deals with Indian child rights laws. The researcher has referred to it to explain Child rights and their origin.

Statement of Problem:

India, as a country, is a welfare state, that tries to maximise welfare for its citizens. Children are a fundamental part of the country, whose rights get infringed a lot. This study tries to delve into the understanding of child welfare laws and how they draw inspiration from UNCRC. This statement of problem highlights the challenges around how the welfare principle and rights of a child are seen in India and sets a stage for additional research aimed at identifying solutions for improving the framework regulating child rights. It also builds a comparison between the Indian laws and international doctrines, specifically the United Nations Convention on the Rights of a Child.

Objectives:

Objective 1: To understand the relevance of UNCRC in India.

Objective 2: To understand if the benchmark by UNCRC has been followed by India.

Research Question:

RQ 1: What is the relevance of UNCRC in India?

RQ 2: Has the benchmark given under UNCRC been complied with by India?

² Leila Seth, The Rights of the Child, 20 India International Centre Quarterly 79–89 (1993), <https://www.jstor.org/stable/23003691> (last visited Mar 5, 2024).

³ Abhay Vikram Singh, Theory of Human Rights in Perspectives to Child Rights, 73 The Indian Journal of Political Science 365–374 (2012), <https://www.jstor.org/stable/41856598> (last visited Mar 5, 2024).

Hypothesis:

The researcher is making an assumption that India has gone ahead with the UNCRC mandate for regulating child laws and has a better established framework for the same.

Research Methodology:

The author has opted for a doctrinal mode of study in which references are drawn from various judgements and sources of law, through which an analogy has been made.

UNDERSTANDING THE UNITED NATIONS CONVENTION ON THE RIGHTS OF A CHILD

The United Nations is an international organisation that has 193 countries of the world as its members. Due to this, the reach of this organisation is vast and its treaties binding on all of its countries.

United Nations through its genesis in 1945 till date, has done the work of an International NGO in all parts of the world. The module of work involves almost all spheres of international relations.

United Nations has always aimed for a particular standard to be followed in all areas by all States in the world. They have achieved this through various treaties and conventions. One such convention is the United Nations Convention on the Rights of a Child, which was tabled before the United Nations General Assembly in 1989, and currently, it has been ratified by 193 countries of the world. In this study, I shall restrict the compliance of the UNCRC in India itself.

India was not one of the initial parties to ratify UNCRC and only did it later in 1992. A child under Article 1 of the convention, is a person who is below the age of 18 years. The Convention is a comprehensive statement consisting of 54 articles based upon the Declaration of the Rights of a Child, 1959 which contained 10 principles.

The Convention can be divided into 5 parts-

- 1) Child in a family environment.

2) Child deprived of family environment and alternative care setup. 3) Child labour and non-discrimination.

4) Education, social security, religious and economic rights. 5) Kidnapping, trafficking and violence.

The 54 articles of the convention confer basic guidelines on the issues aforementioned.

In India, the following rights can be traced through the following legal instruments and framework:

1) **Constitution(Grundnorm)**-The grundnorm of our country, i.e. the Constitution of India already talks about child rights under Part III and Part IV.

2) **Protection of children against sexual offences act,2012**-It is an act that seeks to protect minors from sexual offences.

3) **The Right to Education Act, of 2009**-It provides for free and compulsory education for children in the age group of 6-14 years.

4) **The Juvenile Justice (Care and Protection of Children) Act, 2015**-This act works for multiple aspects such as secular adoption, punishment of Children in Conflict with Law(CCL), etc.

5) **The Prohibition of Child Marriage Act, 2006**-This act seeks to prohibit marriages of children below their legal age and also gives provisions for the dissolution of child marriage and punishment of stakeholders involved.

6) **The Child Labour(Prohibition and Regulation) Act, 1986**-It seeks to abolish begar and child employment of children in factories and hazardous environments.

If we closely see the dates of the following statutes, it can be noted that some of these were present before the genesis of the UNCRC. The reason for this is that our constitution is based upon the Universal Declaration of Human Rights and also draws influence from democratic nations providing for a welfare State.

In the further chapters, we'll be building upon the study by examining the provisions of UNCRC and how they have impacted the Indian framework or if they have previously been mentioned in Indian laws.

CHILD IN A FAMILY ENVIRONMENT

A major issue that is seen globally is the environment that a child grows up in as this affects everything including his behaviour, habits, education, health, influence on society, etc. Therefore, it is very important that a child grows in a good environment that is free from negative influence and that the child's development takes place in the best possible manner.

This has been addressed by the Convention under Articles 3, 5, 6, 9, 10, 18, and 19.

1. Article 3 puts a duty to ensure the best interest of the child.
2. Article 5 talks about the child having a family environment while growing up for his/her development.
3. Article 6 talks about the life, survival and development of a child.
4. Article 10 talks about the contact between the parents and child should remain even if they are in different nations.
5. Article 18 stresses the responsibility of parents to ensure proper development of a child.
6. Article 19 talks about the responsibility of the State to prevent a child from being endangered and succumbing to different forms of violence.

All the rights mentioned above have a clear mention in the Indian framework.

Firstly, section 13 of the Hindu Minority and Guardianship Act, 1956 provides that when appointing the guardian, the welfare of the child should be taken into prime consideration. This ensures that the child does not go into a bad environment upon losing his/her parents and that his best interests are looked at.

Secondly, the constitution through Article 24 prohibits children from working in factories or situations that may endanger their life.⁴

⁴ MC Mehta v. Union of India, AIR 1997 SCC 699.

Thirdly, section 20 of the Hindu Adoption and Maintenance Act, 1956 puts a duty on a Hindu to maintain his/her legitimate and illegitimate children and also provides for the child to be eligible to claim maintenance. This puts a duty on parents to keep the best interests of the child in mind, irrespective of the relationship between the father and mother. A child can also claim maintenance under section 125 of the Criminal Procedure Code.

Fourthly, section 75 of the Juvenile Justice Act, 2015 punishes those individuals who assault, abandon, expose, or wilfully neglect a child. This is a safeguard by the State for the children.

Fifthly, section 24 of the Guardianship and Wards Act, of 1890 puts a duty upon a guardian to look into the support, health, and education of the child.

Sixthly, section 26 of the Hindu Marriage Act, allows the court to impose orders in cases of custody, guardianship and maintenance, in the best interests of the child.

This makes sure that the child's best interests are met even after the parting of the parents from each other. Therefore, it makes sure that the child's health, education and well-being are not compromised. Other than this, the courts of law have gone ahead of the statutes and ensured the best interests of the child.

In *Githa Hariharan v. Reserve Bank of India*,⁵ the Supreme Court allowed a mother to become the sole guardian of the child because of desertion by the father. Even though the main statute provides for the father to be the guardian of the child.

In another case, the court went against the traditional recognition of maintenance and provided the right for unmarried girls who have attained majority, to claim maintenance from parents.⁶

CHILDREN DEPRIVED OF FAMILY ENVIRONMENT AND ALTERNATIVE CARE SETUP

These rights focus on those children who are displaced from their parents, either due to the death of their parents or natural calamities, for whom alternative care needs to be set up. They have been addressed under articles 20, 21, 25, and 39 of the Convention.

⁵ *Githa Hariharan v. Reserve Bank of India*, AIR 1999 2SCC 228.

⁶ *R. Jagdish Jugtawat v. Smt. Manjulata*, (2002) 5 SCC 422.

1. Article 20 talks about the rights of a child without a family, who should have a right to special care and protection.
2. Article 21 talks about the adoption of children, and it should be done by keeping in mind, the best interests of a minor child.
3. Article 25 requires for review of a child's placement after he/she has been put away in custody from his original home, to ensure that the child is not being exploited and his interests are being taken care of.
4. Article 39 talks about recovery & reintegration of children who have been hurt, badly treated or are victims of war.

These rights also find mention in the Indian framework.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

There is an entire chapter under this act that talks about adoption and has various rules and procedures regarding it to make sure that the child goes into good company and remains happy there.

Some important sections of the act relating to adoption are:-

Firstly, section 2(14) defines the child in need of care and protection.

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Secondly, section 41 requires mandatory registration of Child care institutions and section 42 imposes a penalty for non-registration.

This ensures that the places taking of the children or where the children are sent are government-approved. Government approval, here is important to ensure that the CCIs match the criteria given and are a safe place for the child to grow in.

Thirdly, there are provisions of foster care, aftercare for children who have to be rehabilitated and Long-term care by the State under sections 44, 43, 45, 46 and 37(c) respectively.

This system ensures that children who have no one or have been oppressed have a safe place to go to if they have no family. The role of government in this make sure that the children going to these places are not oppressed.

Fourthly, Section 57 requires prospective adoptive parents to fit in, both mentally and physically to undertake adoption. Also, a couple can only adopt, when the consent of both spouses is there.

This again ensures that the child is going to a place where he/she can grow up in a happy environment, where the parents want wanting adopt a child and give him/her the best life. Other than this there is an adoption procedure that ensures that the child goes to a good family and does not end up in a bad state, i.e. in poverty, violence, begar, etc. There is also a Central Adoption Resource Agency to monitor and regulate in-country and inter-country adoption.

India remains resolute when it comes to the issue of adoption and as written above, the legislations also remain in place. Even when it comes to implementation, there is a body above a certain body to check and make sure that things are taking place in the manner in which they should. For example, the central adoption resource agency needs to submit an annual report to the central government on this issue and then the government shall table this at the parliament.

There are provisions to ensure that children of a particular religion go to a family of the same religion or religion with the same culture under the Hindu Adoption and Maintenance Act and ensure that the child goes into an environment that is not very different from his/her own culture. India also has a statutory body called the National Commission for Protection of Child Rights which ensures that the guidelines of all these statutes are followed and keeps track of all NGOs and child welfare organisations of India.

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CHILD LABOUR AND NON-DISCRIMINATION

Child labour is a situation where a person below the age of 18 is engaged in dangerous work at a factory, which may harm his/her life. Article 32 was put in by the convention that states children have the right to be protected from doing work that is dangerous or bad for their education, health or development. If children work, they have the right to be safe and paid fairly.

To ensure this, the Indian constitution itself has many safeguards, ranging from:

a) **Fundamental Rights:**

- 1) Article 21-Personal liberty of an individual cannot be restrained except for procedure established by law.

- 2) Article 23 prohibits trafficking in humans and abolishes begar.
- 3) Article 24 requires that no child below the age of 14 should be employed in a factory or hazardous area.

b) **The directive principles of state policy:**

Article 39 puts a duty on the state to ensure children are not abused and are given facilities to develop to their fullest potential.

Next, there are legislations in place to ensure that child labour does not take place:

- 1) The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986-

This act prohibits children from working in certain areas which cause harm to the lives of children.

- 2) The Child Labour (Prohibition and Regulation) Amendment Act, 2016-

Section 2(i) defines an 'adolescent' as a person between the ages of 14-18 years.

Section 3(2) clarifies that this act does not extend to those children who work under safe conditions, in the audio-visual or sports industry.

Therefore, this again helps in regulating what kind of employment would be right and what is not.

- 3) Juvenile Justice (Care and Protection of Children) Act, 2015-

As stated above, this act has provisions which forbid engaging children in hazardous employment and if not followed by actual caretakers can lead to their imprisonment.

These provisions of law along with the Ministry of Labour and Employment and other agencies such as the National Child Labour Programme work upon eradication of child labour.

NON-DISCRIMINATION

Article 2 of the CRC states that All children have all these rights, irrespective of their religion, language, creed colour, etc. No child should be treated unfairly for any such reason.

Articles 14,15,17,18,21,30 of the Indian constitution ensure that no discrimination is done while exercising any right, ranging from education, professing religion, etc.

Article 14 prohibits class legislation and therefore, ensures that each individual is equally treated under the law.

Article 15(3) allows the State to make special laws for children. Article 17 abolishes all forms of untouchability.

Article 18 abolishes all forms of titles.

Article 21 ensures that a person's right to life and liberty are protected at all times.

Article 30 allows minorities to establish minority institutions to cater for the needs of such minorities.

EDUCATION, SOCIAL SECURITY, RELIGIOUS AND ECONOMIC RIGHTS

Education is the modification of one's behaviour and hence, they complement each other. Both of them are essential for the development of an individual. Therefore, even for a child to develop in society, he/she should get educated and the state has to ensure it.

They have been addressed under articles 6, 12, 13, 14, 15, 16, 17, 23, 24, 26, 27, 28, 29 and 31 of the convention.

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1. Article 6 talks about the life, survival and development of the child which needs to be ensured by the parents and State.
2. Articles 12,13, and 14 talk about respect for children's views and the right to the propagation of religion.
3. Articles 16 and 17 talk about the protection of privacy and access to information.
4. Article 23 talks about the protection of the interests of children with disabilities by the State.
5. Article 24 talks about health, water, food and a good environment for children.
6. Article 26 states that children should be provided with Social & economic help.

7. Article 27 talks about the availability of food, clothing and safe housing to all children.
8. Article 28 dictates for free and good quality primary education by the state for all children.
9. Article 32 talks about the protection of children from hazardous work which may harm their health and life.

These rights have been ensured both constitutionally and through statutes in India.

THE INDIAN CONSTITUTION

- 1) Article 21 of the Indian Constitution, i.e. the right to life and personal liberty under which education was found to be a fundamental right and Article 21A was put, providing for free and compulsory education as a right to be given to all children(6-14 years).

In comparison with the UN norms, India provides free and compulsory education to children between 6-14 years of age and on the other hand, the UN only mentions the age bracket of 6-11 years. This shows that India has gone ahead of the UN-prescribed requirements of education.

Other than this, the RTE Act, of 2009 clearly states that any student who is beyond 14 years old but has not completed his/her schooling till grade 8, will still come under this scheme of free education and it shows India's underlying support for underprivileged children who do not get opportunities of educating themselves.

- 2) Article 28 of the Indian Constitution ensures that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. This ensures that there is no discrimination and that children can freely obtain education.
- 3) Article 29 of the Indian Constitution states that no citizen shall be denied admission into any educational institution maintained by the State on grounds only of religion, race, caste, language or any of them.
- 4) DPSPs-Article 39 and Article 45 talk about the early education of children and providing children with development opportunities.

Section 3(1) of the Indian Majority Act, of 1875 ensures that every individual attains majority not before the age of 18. In cases of court-appointed guardian, it is 21 years.

This ensures that children and adolescents both are protected by the government with child and adolescent rights till they reach the age of 18 and can make rational decisions on their own.

The Indian Partnership Act also allows minors to be a partners.

GOVERNMENT POLICIES/PROGRAMMES/SCHEMES

- 1) The National Plan of Action for Children, 2016 provides opportunities for children, to enhance their capabilities.
- 2) Integrated Child Development Services scheme, is for children between 3-6 years, to provide them care at Anganwadi centers, and also provides for a mid-day meal scheme in schools.
- 3) New education policy, 2020 builds upon the DPSP, that requires the government to foster early child development and education. The current structure of education does not cover children of ages 3-6 but the new education policy, in its ambit, even includes children from the age of 3 years.

There are many other schemes by the Indian government in play, to ensure early childcare and development. Therefore, these current developments in the Indian education system ensure that children are enrolled in education from a young age and it strengthens Early Childhood Care and Education (ECCE). All of these together ensure that children's social, political, religious, and educational rights are protected and preserved in India.

6, Kidnapping, trafficking, violence against children

Kidnapping, trafficking, and violence against children are issues that lead to mental trauma, bad health, not receiving proper education, etc. Till these issues are not countered, a child cannot be safe so, for this the UNCRC made the following provisions:

1. Article 11 requires the parties of the convention to protect children from Kidnapping.
2. Article 24(3) requires the parties of the convention to abolish practices, that cause problems to the health of children.

3. Article 33 requires the parties of the convention to prevent drug abuse.
4. Article 34 requires the parties of the convention to ensure that children do not succumb to sexual abuse.
5. Article 35 requires the parties of the convention to ensure that practices of the sale and trafficking of children are banned.
6. Article 36 requires the parties of the convention to prevent children from succumbing to any form of exploitation.
7. Articles 37 and 40 talk about children who conflict with the law should not be tortured, or subjected to capital punishment. They should also be provided with legal help and prison should be the last option.
8. Article 38 talks about the integration of those children who have been affected by the spoils of war, or have been hurt, so that they get back to their original health and status.

These issues have been properly addressed in India with firm laws that exist to prevent such exploitation of children. The enforcement of these laws is ensured through Police and statutory bodies such as NCPCR and other state child welfare organisations.

CONSTITUTION OF INDIA

The grundnorm of India prohibits forced labour under Article 23 and also provides for Article 39, which puts a responsibility to ensure children are given opportunities to develop to their fullest potential without facing any abuse.

POCSO, 2012 under its ambit seeks to prevent children from succumbing to sexual offences and provides for harsh punishment for those individuals who abuse children.

Prohibition of Child Marriage Act, 2006 seeks to prevent child marriages that make girl children early mothers, which causes harm to their life and well-being.

Indian Penal Code, 1860 imposes punishment and fines against those individuals involved in the Kidnapping, exploitation, and trafficking of children and ensures deterrence.

Juvenile Justice(Care and Protection) Act, 2015 contains provisions that deal with children who conflict with the law or someone who has been charged with an offence. It also classifies

children into different sub-groups to ensure that they remain protected. These provisions are in line with the UNCRC.

- 1) Section 15 of the act provides for a compulsory preliminary assessment to assert whether a minor (age 16-18), should be tried as an adult or a child.
- 2) Section 21 ensures that no child is given a death or life sentence.
- 3) Section 27 requires a child welfare committee to be established in every district.
- 4) Section 30 requires for any child in need of care and protection to be brought before the committee and there it shall be decided about which forum the child needs to be sent into.
- 5) Section 37 requires the Child welfare officer to ensure that the child is given care, and his/her needs are taken care of.
- 6) Section 39 commands that all measures should be taken to rehabilitate the child into society post his detention/ punishment, which should be in guidelines to the sections of the act.

All these statutes and enactments in India ensure that no child is discriminated against or punished wrongly and is protected from all kinds of kidnapping, trafficking and violence.

All these statutes cover all kinds of crimes and violations and also have stated procedures to deal with them. To ensure that these bodies function effectively, there are also commissions or committees under these statutes.

They ensure that these children get the justice that they deserve and also ensure that while giving this justice, children do not face any mental trauma.

Not only this, India by ensuring and enacting these provisions has gone ahead of the UN mandate given in the CRC and has ensured more rights and protections to the children of their country.

CONCLUSION

The UNGA established a framework so that children across the globe who face numerous issues due to which their social life could not be lived happily those who could not reach their full potential due to no education or a bad environment at home, or those children who were victims of sexual offences, or other natural calamities, or war. They not only identified the

issues but set up a comprehensive guideline for each member state so that the rights of a child are protected and they can grow to their full extent. The main factors covered in this were the environment in which the child resided, his/her cultural, social, educational and religious rights, the right not to be exploited and the right to be protected by the state.

When we talk about India, it has always been committed to ensuring the rights of a child are protected. The reason I say this is because even before the inception of UNCRC, India already had a framework to ensure that discrimination against children or violation of their rights does not take place. Over the years, India has further enhanced its laws in line with the Convention, such as increasing the age of marriage to 18. In India, where the laws have failed to provide for the welfare of children, the courts have taken up a stand and ensured that only the welfare of children takes place.

Even the personal laws in India, dictate that when it comes to Children, their adoption or any other right, the welfare of the children shall be looked at by the court, and in doing so, the court may bypass the already existing law.

Currently, as India stands, it has moved ahead of the prescribed goals mentioned in the UNCRC and also implemented them. India still has some more improvisations to do when it comes to adoption as laws in that area have been divided according to gender, religion, etc. However, when it comes to education, India has gone ahead by ensuring education not only to the UN-prescribed 6-11 age bracket but also to the 3-6 age group under the New education policy and the 6-14 age group for primary education. Legally, India stands strong on its commitment to the CRC has made numerous advances when it comes to child rights and is committed to further bettering the conditions of children in India. Even when it comes to the implementation, India has a fully functioning Women and Child Development Central Ministry which has its subordinates and various bodies such as the National Commission for Protection of Child Rights that ensure that children are not ill-treated and that these children get their rights without any encumbrance. The National Commission for Protection of Child Rights must look at all NGOs/bodies working under child rights statutes, to see if the enforcement of the law is properly being done. Hence, the hypothesis that “India has gone ahead of the UNCRC mandate for regulating child laws and has a better-established framework for the same”, is true and validly stands.

Therefore, India as a country has ensured that is fully committed to the Convention's resolution and it is seen in the government policies as well. Law is a dynamic entity, so as each decade passes, the government should ensure that the rights also develop, to ensure the welfare of children.

