

DE JURE NEXUS LAW JOURNAL

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**CHILDREN RIGHTS**

De Jure Nexus

Introduction-

Child Slavery is crime against humanity. Humanity itself is at stake here. A lot of work still remains, but I will see the end of the child labour in my life time- Kailash Satyarthi.

Etymologically, the term "child" comes from the Latin infants which means the one who do not speak for the Romans, this term designates the child from its birth, up to the age of 7 years but this notion evolved a lot through centuries and cultures to finally designate human being from birth until adulthood but this conception of the child was wide and the age of the majority varied from the culture to another.

Children's are young human beings. As human being children's evidently have a certain moral status. There are things that should not be done to them for the simple reason that they are human. And it seems reasonable to think that children may not do that adults are permitted to do.

We have seen Children are abandoned. They do not get chance to step in a school. They are left to fend themselves on the street. They suffer from many forms of violence. They don't even have access to healthcare. They are Children who are innocent young and beautiful who are deprived of their rights.

The United Nation Convention on the rights of the child defines child right as the minimum entitlement and freedoms that should be affordable to every citizen below 18 years of age regardless of gender, race, colour, religion, opinions, language, origin, wealth, birth status, disability or other characteristics.

Concept or Definition of CHILD in India-

The 1989 United Nations Convention on the Rights of the Child defines a child as an individual who has not attained the age of 18 years. In India, various acts and statutes define the child differently as regards the requirement of age.

For instance-

1. As per the Plantation Labour Act 1951 has a separate definition for the child, adolescent, and adult. According to this Act 'child' means a person who has not completed his fourteenth year. 'Adolescent' means a person who has completed his fourteenth year but has not completed his eighteenth year whereas 'adult' means a person who has completed his eighteenth year.
2. Child Labour (Prohibition and Regulation) Act, 1986 – a child is defined as a person who has not completed 14 years of age.
3. The Motor Transport Workers Act 1961, and The Beedi and Cigar Workers (Conditions of Employment) Act 1966, both Acts define a child as a person who has not completed 14 years of age.
4. The Matrimonial laws such as the Prohibition of Child Marriage Act, 2006 add to some confusion. It states that a male cannot attain majority until he is 21 years of age and the corresponding age for a female is 18.
5. The Factories Act 1948, this Act defines a child is a person who is below 15 years of age.
6. The Apprentices Act, 1961- 14 years of age.
7. The Immoral Traffic (Prevention) Act, 1986- "child" means a person who has not completed the age of sixteen years
8. The Juvenile Justice Act, 2001- 18 years
9. The Draft Bill of the National Commission for Children, 2000- 14 years [1]

A history of children's rights-

In the industrialized countries of the early twentieth century, there were no standards of protection for children. It was common for them to work alongside adults in unsanitary and unsafe conditions. Growing recognition of the injustices of their situation, propelled by a greater understanding of the developmental needs of children, led to a movement to better protect them.

Following the devastating aftermath of the world wars of the 20th century and their psychological and physical impact on children, the United Nations (UN) decided that the human rights of children required special protection.

¹ JUSTICE VR KRISHNA IYER & JUSTICE DR AR LAKSHMANAN, CONCISE LAW DICTIONARY, (Universal Law, 2014)

After World War I, the League of Nations (which would later become the UN) drafted the Universal Declaration of Human which included the rights to life, food, shelter, education, freedom of speech and religion, justice, and peace.

Recognizing that children were especially vulnerable, the UN agreed to adopt the Declaration of Geneva on Children's Rights. This declaration was short with only five statements, but it outlined a list of responsibilities towards children who were considered vulnerable.

The Convention on the Rights of the Child is the most widely ratified human rights treaty in history. It sets out the rights of children in 54 articles and is guided by four beliefs:

1. Children should not suffer discrimination (Article 2).
2. In all decisions affecting children, their best interests should be the main concern (Article 3).
3. Children have the right to survive and develop healthily (Article 6).
4. Children have the right to have their views taken into account in matters that affect them (Article 12).

Constitutional Guarantees that are meant specifically for children-

The Indian Constitution contains certain provisions specifically aimed at the protection, development, and welfare of children. Because children are the assets of the country. They need protection and provisions to develop into complete beings capable to guide the nation.

Provision related to Children in "Constitution of India":

Article 14- According to Article 14 of the Indian Constitution the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Thus, nobody including the children should be denied equality of status, opportunity, and protection.

Article 15(3) - which provides for protective discrimination in favor of children, says: "Nothing in this Article shall prevent the state from making any special provisions for women and children." [2]

Article 21- A of the Constitution states that "Right to Education- 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."

The Supreme Court in its liberal interpretation of life and liberty as under Article 21 held the term liberty not only includes liberty but also includes livelihood but also the right of human beings to live with dignity and that also includes the right to education, and therefore, right to education is the fundamental right under the constitution. The case Mohini Jain case come to fortified by the supreme court's subsequent constitution bench of Unnikrishnan bench, which held that the right to education, can be restricted to primary education level and not to higher secondary level. [3]

Article 24- specifically prohibits employment of children below the age of 14 years in any factory, mine, or in any other hazardous employment. This provision is incorporated in the Constitution for the safety of the life of children. In Labourers Working on Salal Hydro

² M.P. Jain, Indian Constitutional Law, Vol.1. 5th edn., Wadhwa& Co., Nagpur, 2003 at p. 1060

³ AIR 1993 SC 2178

Project v. State of J. & K., the court held that construction work is hazardous employment and children below 14 years cannot be employed in such type of work. Article 24 makes it obligatory for the state to protect the economic, social, and humanitarian rights of millions of children working in factories and such other workplaces.

Directive Principles of State Policy

This part of the Constitution, viz., part IV, also clearly provides for policies directed towards the welfare of the children, as this part has been designed to “strive to promote the welfare of the people by securing and protecting as effectively-[4]

Article 39(a), (e), and (f) specifically provide certain policies to be followed by the State for the welfare of the children. Article 39(f) states “that children are given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment.”

Article 45 in explicit terms directs the State to endeavour to provide free and compulsory education for all children until they complete the age of 14 years, within 10 years from the commencement of the constitution. This direction reflects the interest of the framers of the constitution as regards the education of the children as education is the foundation for the healthy and proper development of a child.[5]

Child Rights-

The Right to Survival

From the first moment, children are born; they have the right to life. They have the right to a registered name and nationality. They have the right to be cared for and protected by their parents and not be separated from their families. The government needs to safeguard these rights and provide basic services for children to survive and thrive. This includes quality healthcare, age-appropriate nutrition, clean drinking water, and a safe place to live as well as access to future opportunities for development.

The Right to Health and Nutrition

Articles 2 and 3 provide for the right to health and nutrition respectively. Accordingly, the State shall take measures to ensure that all children enjoy the highest attainable standard of health, and provide for preventive and curative facilities at all levels especially immunization and prevention of micronutrient deficiencies for all children. The responsibility to provide all children from families below the poverty line with adequate supplementary nutrition is also cast upon the State. The State shall take steps to provide facilities for environmental sanitation and hygiene.

⁴ Indian Constitution- Article-38

⁵ Unnikrishnan v. State of A.P.,(1993) 1 SCC 645

The Right to Protection

Once children are born and survive, they have the right to be protected from all forms of harm including domestic violence. They must be protected from physical violence and psychological intimidation may they be within and outside their families. The right to protection also includes being protected from child labor, tasks that are dangerous or impede their education. Likewise, children must be protected from harmful substances and drugs. Another important aspect is protection from trafficking, smuggling, kidnapping, sexual abuse, and all forms of exploitation against children. The government also must ensure those child victims are rehabilitated and reintegrated into society with dignity.

In terms of the justice process, every child not only has the right to fair treatment but also unique attention to children's needs meaning every legal procedure needs to take into account the best interest of children.

For children separated from their families, they have the right to be protected and cared for their ethnic background, language, religion, and culture. In wartime, every child must be protected from war or joining the fighting. When children are refugees, they must have special assistance and protection.

The Right to Development

A child today is an adult of tomorrow. Education and development are essential rights. This should begin with the right to access to early childhood development services and access to information from various sources with parents responsible for giving guidance. Meanwhile, children with special needs such as children with disabilities must have equal rights to development and education that enable them to realize their potential and meaningfully participate in society. The right to development also includes the opportunity to further specialized skills and physical and mental abilities that open ways for them to a brighter future and realize their dream.

The Right to Participation

Children are members of society. They may be small in size but they fully have the right to freely express their thoughts, views, and opinions, and participate in society particularly in the areas affecting them. Their voices must be seriously taken into account in line with their age and maturity.

Every child and youth has unfathomable potentials. While the government has to facilitate and support the participation of children and youth, everyone also needs to take action to support children and youth to participate and exercise their agency as they are also the main driving force in bringing about positive change to society.

Right to Education

The Constitution (Eighty-sixth) Amendment Act has now inserted Article 21A in the Constitution which makes education a Fundamental Right for Children in the age group of 6-14 years by providing 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”.

Right to be protected from Economic Exploitation

The duty of the State to protect children from economic exploitation and from performing tasks that are hazardous to their well-being is also recognized. The state shall also ensure that there is appropriate regulation of conditions of work in occupations and processes where children perform work of a non-hazardous nature and that the rights of the children are protected. The ideal goal is that the State shall move towards a total ban of all forms of child labor. [6]

Article 24 prohibits employment of children below the age of 14 in any factories, mines, or in any other hazardous occupations. This article came up for consideration in **the Salal Hydrel Project Case**, [7] where the Supreme Court had an excellent opportunity of interpreting the true meaning and content of Article 24. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Art.24 children under 14 could not be employed in a hazardous occupation.

The Supreme Court in its decision in **M.C. Mehta v. State of Tamil Nadu** [8] dealt with child labor working in Match Industries at Sivakasi (Tamil Nadu) directed that children should not be employed in hazardous jobs in factories for the manufacture of matchboxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life.

Child Rights and the world-

People from across the world striving for social justice have often directed their efforts toward the most vulnerable in society- the children. From Princess Diana's charitable work on behalf of children to the efforts of activists like Grace Abbott and the youngest Nobel laureate in history- Ms. Malala Yousafzai, these famous children's rights activists have put commendable efforts into helping improve the lives of the youngest citizens.

2014 Nobel Peace Prize awardees- Ms. Malala Yousafzai and Mr. Kailash Satyarthi have reminded us all of the need to keep on advancing in providing opportunities that has an important effect on all children. The opportunities are meant to be meaningful enough to allow them to learn and gain the mindsets and skills that would empower them to be free, develop themselves, their communities, and the world.

Mr. Kailash Satyarthi's struggle to liberate children from child labor had cost him many life threats, including bullet wounds by those who exploit young boys and girls for economic gain. Wearing flak jackets, and armed with strong determination, he and his team raided many illegal factories and mines to rescue the children who are sold into servitude. It has been 30 years now since he started his movement. A movement that has one clear purpose no child shall be a slave.

⁶ Indian Constitution- Article-8

⁷ Labourers Working on Salal Hydro Project v. State of Jammu & Kashmir and others, 1983 (II) SCC 181

⁸ M.C. Mehta v. State of Tamil Nadu (1991) 1 SCC 283

On the other hand, when one thinks of **Ms. Malala Yousafzai**, the first thing that pops into one's mind is education. The second is- education for girls. In 2009, when she was just 11, she wrote to BBC about the norm of banning female education under the Taliban regime in the Swat Valley (her hometown). Her article gained tremendous momentum worldwide. She started her fight for the education of girls at that small age and began to speak publicly and to the press, which caused her and her family to receive constant death threats.

"I strongly feel that this is a big honour to hundreds of millions of the children who have been deprived of their childhood and freedom and education." - Mr. Kailash Satyarthi.

"I speak not for myself but for those without voice... those who have fought for their rights... their right to live in peace, their right to be treated with dignity, their right to equality of opportunity, their right to be educated." -Ms. Malala Yousafzai

LEGISLATIVE SUPPORT TO THE CHILD RIGHTS-

The Women's and Children's Institutions (Licensing) Act, 1956

The Mine's Amendment Act, 1983

The Child Labour (Prohibition and Regulation) Act, 1986

The Immoral Traffic (Prevention) Act, 1986

The Guardian and Wards Act, 1890

The Hindu Minority and Guardianship Act, 1956

The Hindu Adoption and Maintenance Act, 1956

The Orphanages and Other Charitable Homes (Supervision And Control) Act, 1960

The Probation of Offenders Act, 1958

The Young Persons Harmful Publications Act, 1956

The Juvenile Justice Act, 2000

The Child Marriage Restraint Act, 1929

The Children (Pledging of Labour) Act, 1933

The Factories Act, 1948

The Apprentices Act, 1961^[9]

Landmark cases-

M.C. Mehta vs. State of Tamil Nadu [JT 1990 SC 263] on Problem of Child Labour

The Petitioner was an individual concerned about the high rate of employment of children in the Match factories of Sivakasi in the Kamaraj District of Tamil Nadu State. He contended that such employment was hazardous and unconstitutional. Being aggrieved, he filed a writ petition under Article 32 of the Constitution. The Respondent Government did not deny the existence of child labor but instead offered suggestions to ameliorate the problem. The Supreme Court issued an order in 1990 calling for a ban on child labor in the manufacturing process of matchsticks and fireworks. However, after this order, an accident occurred in the Sivakasi Match Factories in which 39 people died. After this was published, the Court took

⁹ India Country Report to the UN CRC, 1997

suo moto cognizance of the incident. The Court appointed a Committee to investigate the matter and make suggestions, such as payment of compensation.

On the issue of child labor, the Court held that this malady was not prevalent in Sivakasi alone. Therefore, the Court held that it was necessary to address this issue at a national level to find a suitable solution that would rid the country of this problem. The Court held that Articles 24, 39(e) and 9(f), 41 and 47 obligated the State to abolish child labor while ensuring the healthy development of the child. The Court held that India had also ratified the UN Convention on the Rights of the Child. Under Article 32 the Government of India is required to take legislative, administrative, social, and educational measures to ensure the protection of the child from hazardous exploitation and its healthy development. In the domestic sphere, the Court held that there are several pieces of legislation such as the Child Labour (Prohibition and Regulation) Act, 1986 (the Act) that protect children from exploitation. However, the Court took note of the fact that poverty compels a family to push their child into hazardous employment. The Court held that it was thus necessary to fulfill the legislative intent behind the Act to ensure the healthy development of a child. The Court directed that anyone contravening the provisions of the Act would pay a sum of Rs 20,000 to the concerned authority. This sum would be deposited in a Child Labour Rehabilitation cum Welfare Fund (the Fund). This income from the Fund would be used for the concerned child. As to the provision of employment of an adult in place of a child, the Court held that the Respondent Government can't ensure such a uniform scheme. However, the Court held that the Government could, in cases where alternative employment is not possible, deposit a sum of Rs 5,000 to the Fund, to be used by the concerned adult. In this case, the child would be spared the prospect of hazardous employment as the family would gain an additional source of income. The Court issued certain guidelines in this regard to be followed by the Respondent Government such as Identification of the hazardous industries in which child labor is common; Provision of alternative employment, and in cases where it is not possible, to provide the family with a sum of Rs 25,000 each month, per child. This employment or payment would be discontinued if the child was not sent for education; where non-hazardous jobs are concerned, the working hours of the child would be no more than 6 hours a day and would receive education for two hours a day. The cost of education was to be borne by the employer. [10].

Shiela Barse vs. Union of India [AIR (1986) SC 1883, AIR (1988) SC 2211]

on Trafficking of Children: On 12th July 1986 this Court issued various directions regarding the physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for 'safe custody'. Giving further directions, So far as a child-accused of an offense punishable with imprisonment of not more than 7 years is concerned, a period of 3 months from the date of filing of the complaint or lodging of the First Information Report is the maximum time permissible for investigation and 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be

¹⁰ M.C. Mehta vs. State of Tamil Nadu ,

quashed. Every State Government shall give effect to this principle or norm in so far as any future cases are concerned. [11]

Law Before the 2012 legislation was passed-

Goa Children's Act, 2003, was the only specific piece of child abuse legislation before the 2012 Act. Child sexual abuse was prosecuted under the following sections of the Indian Penal Code

- I.P.C. (1860) 375- Rape
- I.P.C. (1860) 354- Outraging the modesty of a woman
- I.P.C. (1860) 377- Unnatural offenses

However, the IPC could not effectively protect the child due to various loopholes like:

- IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peno-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Further, it does not protect the "modesty" of a male child.
- In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their attacker's sex act and is not designed to criminalize the sexual abuse of children.

After 2012

The Protection of Children from Sexual Offences Act (POCSO Act) 2012

This Act is a comprehensive set of laws to protect children from sexual abuse, pornography, harassment. This Act also provides for children with the easier yet effective judicial procedure and child-friendly mechanism for reporting, investigating, evidence collecting, etc. The Act also provides for special courts to deal with such matters.

Forms of sexual abuse

The Act defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, etc.

It further states that a sexual assault is to be considered "aggravated" under certain specific circumstances, such as when the abused child is mentally ill or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person in a position of trust or authority of the child, like a family member, police officer, teacher, or doctor or a person-management or staff of a hospital whether Government or private.

Reporting of sexual abuse

The Act makes reporting of sexual offences mandatory.

It makes it the legal duty of a person who has knowledge that a child has been sexually abused to report the offence; if he/she fails to do so, he/she may be punished with six months' imprisonment and/or a fine.

Trial

¹¹ Laxmikant Pandey vs. Union of India [AIR (1984) SC 469, AIR (1986) SC 276, AIR (1987) SC 232

According to the act, the evidence of the child should be recorded within thirty days of the Special Court taking cognizance of the offence and the Special Court shall complete the trial, as far as possible, within one year from the date of taking cognizance of the offence.

It also provides that the Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

Punishment

The POCSO act also provides provisions for punishment for false complaints or false information.

The Act prescribes stringent punishment according to the gravity of the offence and prescribes rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and also fine as punishment for aggravated penetrative sexual assault.

The Act also prescribes imprisonment of either description which may extend to three years or with a fine or with both as punishment for storage of pornographic material involving a child.

It also prescribes punishment to the people who traffic children for sexual purposes. [12]

Child Helpline Service-

A phone number that spells hope for many children across India, CHILDLINE is India's first 24-hour, free, emergency phone service for children in need of aid and assistance. Whether you are a concerned adult or a child, you can dial **1098**, the toll-free number to access services.

CHILDLINE is a dais bringing together the Ministry of Women & Child Development, Government of India, Department Of Telecommunications, street and community youth, non-profit organizations, academic institutions, the corporate sector, and concerned individuals.[13]

Conclusion-

The commitment to reduce the burden of childhood diseases has often been proclaimed by international and national declarations. All the same, high levels of childhood mortality, morbidity and disability still persist. In many countries one of the reasons for this is the impact of childhood injuries, affecting children of all ages.

The global community has the knowledge, an armoury of interventions and the resources to prevent this loss of healthy life in the youngest members of our community. This report is a plea for evidence-based interventions and sustained investments by all sectors – public, private and civil – in injury prevention and control for children. It is time to unleash the promise of governments and create a world where children can learn, play, grow up and live without being killed or injured.

¹² The Protection of Children from Sexual Offences Act (POCSO Act) 2012

¹³ CHILDLINE 1098 SERVICE