



## LAW OF HUMAN RIGHTS FOR EDUCATIONAL DEVELOPMENT OF CHILDREN IN INDIA\*

### Introduction

In the history of human rights, the rights of children are the most ratified. The United Nations Convention on the Rights of the Child (UNCRC) defines Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 regardless of race, national origin, colour, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics.

These rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the fundamental human rights that should be afforded to children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child.

Child is future of the nation. In this global world education is necessary for changing the society. Abduction, kidnapping, bounded labor, trafficking, poverty of parents are main barrier to educate the child. So education became free and compulsory to all children below 14 years in Indian constitution. Children's right for education is not only a human right by itself but also it is instrumental for realizing other human rights. Education opens up opportunities of access to good things of life; it brings awareness for development of one's personality, for excellence of character, welfare of his or her family and for better human relationship. It enables and motives better participation in social, political and cultural life of the community; it is a preparation for living in a better way in future with an ability to participate successfully in the modern economy and society.

Education is key to the civilization standards, to the process of social transformation and striving towards perfection. There is an international obligation under article 28(1)(a) of the UN

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convention on the rights of the child. Article 28(1) a U.N convention on the right of the children says that state parties rights of the child to education and with a view to achieving this rights of the child progressively and on the basis of equal opportunities they shall in particular make primary education compulsory. According to articles 28(1) (g) the state parties shall take measures to encourage regular attendance at schools and reduction of the drop-out rates, being one of the human rights, right to education is part of the law of the land due to judicial interpretation article 29 of U.N convention provides that education of the child shall be directed towards development of the child personality. Talents, mental and physical ability of the fullest potential and towards the development of respect for human rights, for free and harmonious society and for natural environment. This article obligates the state parties to make primary education compulsory and free to all because to encourage development of secondary education to make higher and vocational education accessible to all, to ensure that administration of school discipline conforms to human dignity.

Article 27(1) provides that the state parties recognize the right of every child to a standard of living adequate for the child's physical mental, spiritual, morals and social development. The national commission recommended incorporating right to primary education as a fundamental right and stating that the responsibility for the universalizing of elementary education should be entrusted to panchayats and local-self government institutions and it emphasized the aspects of duties of citizens and community to support of this right.

Insertion of article 21-A to the Indian constitution by 86<sup>th</sup> amendment in 2002 says that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as they may, by law, determine". 86<sup>th</sup> amendment replaced the article 45 which was inserted by constituent assemble 1950 by a new provision says that –"the state shall Endeavour to provide early childhood care and education for all children until they complete the age of six years. In this 86<sup>th</sup> amendment of Indian constitution introduced a new fundamental duties under article-51 (A) (k) says that –"it shall be duty of every citizen of India who is parent or guardian to provide opportunities for education to his child or as the case may be, ward between the ages of 6 to 14 years. The central government announced that the "free and compulsory education"<sup>1</sup> understood and to promote the glorious spirit by stabling of requisite number of educational institutions accessible, adoptable, adequate, acceptable to children and unburdening the parents from the burden of free become the responsibility of the state for all these purpose right to educationact-2009 enacted by the central government as a fundamental right is right to education.

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<sup>1</sup> Article 21 (A) of Indian constitution

## **Universal Dimension on Educational Rights of Children:-**

Education has been formally recognized as a human right since the adoption of the Universal Declaration of Human Rights in 1948. This has since been affirmed in numerous global human rights treaties, including the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education (1960), the International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (1981). These treaties establish an entitlement to free, compulsory primary education for all children; an obligation to develop secondary education, supported by measures to render it accessible to all children, as well as equitable access to higher education; and a responsibility to provide basic education for individuals who have not completed primary education. Furthermore, they affirm that the aim of education is to promote personal development, strengthen respect for human rights and freedoms, enable individuals to participate effectively in a free society, and promote understanding, friendship and tolerance.

The right to education has long been recognized as encompassing not only access to educational provision, but also the obligation to eliminate discrimination at all levels of the educational system, to set minimum standards and to improve quality. In addition, education is necessary for the fulfilment of any other civil, political, economic or social right. The United Nations Convention on the Rights of the Child (1989) further strengthens and broadens the concept of the right to education, in particular through the obligation to consider in its implementation the Convention's four core principles: non discrimination; the best interests of the child; the right to life, and the right of children to express their views in all matters affecting them and for their views to be given due weight in accordance with their age and maturity. These underlying principles make clear a strong commitment to ensuring that children are recognized as active agents in their own learning and that education is designed to promote and respect their rights and needs. The Convention<sup>2</sup> elaborates an understanding of the right to education in terms of universality, participation, respect and inclusion. This approach is exemplified both in the text itself and in its interpretation by the Committee on the Rights of the Child, the international body established to monitor governments' progress in implementing child rights. Perspectives introduced in the Convention on the Rights of the Child-

- The right to education is to be achieved on the basis of equality of opportunity.
- Measures must be taken to encourage regular school attendance and reduce dropout. It is not sufficient just to provide formal education. It is also necessary to remove such barriers as poverty

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<sup>2</sup> The UN convention on the rights of the child-1989

and discrimination and to provide education of sufficient quality, in a manner that ensures children can benefit from it.

- Discipline must be administered in a manner consistent both with the child's dignity and with the right to protection from all forms of violence, thus sustaining respect for the child in the educational environment.
- The aims of education are defined in terms of the potential of each child and the scope of the curriculum, clearly establishing that education should be a preparatory process for promoting and respecting human rights. This approach is elaborated in the General Comment on the aims of education, in which the Committee on the Rights of the Child stresses that article 29 requires the development of education that is child centered, child friendly and empowering, and that education goes beyond formal schooling to embrace a broad range of life experiences through which positive development and learning occur.
- In its General Comment on early childhood, the Committee on the Rights of the Child interprets the right to education as beginning at birth and encourages governments to take measures and provide programmes to enhance parental capacities to promote their children's development.

### **Human rights and child education-**

Articles 28 and 29 of the Convention<sup>3</sup> on the Rights of the Child recognise the right of children to education. The development of children is integrally linked to their right to education. Article 28 makes it obligatory for State agencies to recognise the right of children to education. This is to be achieved on the basis of: equal opportunities; compulsory primary education freely available to all; secondary, higher education accessible to all children; educational and vocational information and guidance; measures to encourage regular attendance at schools and to reduce the dropout rates. By virtue of Article 29, State agencies agree that the education of the child shall be directed to the development of the child's personality, talents, and mental and physical abilities, to their fullest potential.

In 1997, the UN Secretary-general called on all entities of the UN system to mainstream human rights into their activities and programmes'. This led to an inter-agency process of negotiation, resulting in the adoption of a UN Statement of Common Understanding that has been accepted by the UN Development Group. The statement provides a conceptual, analytical and methodological framework for identifying, planning, designing and monitoring development

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<sup>3</sup> UN Convention on social, cultural, economical and educational rights.

activities based on international human rights standards<sup>4</sup>. Essentially, it integrates the norms, standards and principles of international human rights into the entire process of development programming, including plans, strategies and policies. It seeks to create greater awareness among governments and other relevant institutions of their obligations to fulfill, respect and protect human rights and to support and empower individuals and communities to claim their rights. Those are- Universality and inalienability: Human rights are universal and inalienable, the entitlement of all people everywhere in the world. An individual cannot voluntarily give them up. Nor can others take them away. As stated in article 1 of the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights.”

- Indivisibility: Human rights are indivisible. Whether civil, cultural, economic, political or social, they are all inherent to the dignity of every person. Consequently, they all have equal status as rights and cannot be ranked in a hierarchy.
- Interdependence and interrelatedness: The realization of one right often depends, wholly or in part, on the realization of others. For example, realization of the right to health may depend on realization of the right to information.
- Equality and non-discrimination: All individuals are equal as human beings, and by virtue of the inherent dignity of each person, are entitled to their rights without discrimination of any kind. A rights-based approach requires a particular focus on addressing discrimination and inequality. Safeguards need to be included in development instruments to protect the rights and well-being of marginalized groups. As far as possible, data need to be disaggregated – for example, by sex, religion, ethnicity, language and disability – in order to give visibility to potentially vulnerable populations. Furthermore, all development decisions, policies and initiatives, while seeking to empower local participants, are also expressly required to guard against reinforcing power imbalances or contributing to the creation of new ones.
- Participation and inclusion: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to and enjoyment of civil, economic, social, cultural and political development, through which human rights and fundamental freedoms can be enjoyed.
- Empowerment: Empowerment is the process by which people’s capabilities to demand and use their human rights grow. They are empowered to claim their rights rather than simply wait for policies, legislation or the provision of services. Initiatives should be focused on building the capacities of individuals and communities to hold those responsible to account. The goal is to give people the power and capabilities to change their own lives, improve their own communities and influence their own destinies.

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<sup>4</sup> UN convention on development of child education

- **Accountability and respect for the rule of law:** A rights-based approach seeks to raise levels of accountability in the development process by identifying 'rights holders' and corresponding 'duty bearers' and to enhance the capacities of those duty bearers to meet their obligations. These include both positive obligations to protect, promote and fulfill human rights, as well as negative obligations to abstain from rights violations. In addition to governments, a wide range of other actors should also carry responsibilities for the realization of human rights, including individuals, local organizations and authorities, the private sector, the media, donors, development partners and international institutions. The international community also carries obligations to provide effective cooperation in response to the shortages of resources and capacities in developing countries.

The UN Convention on the Rights of the Child introduces an additional perspective. It imposes limits not only on the state but also on parents. It insists that children's best interests must be a primary consideration in all matters affecting them, that their views must be given serious consideration and that the child's evolving capacities must be respected. In other words, the Convention affects the right of parents<sup>5</sup> to freedom of choice in their child's education; parental rights to choose their children's education are not absolute and are seen to decline as children grow older. The rationale behind parental choice is not to legitimize a denial of their child's rights. Rather, it is to prevent any state monopoly of education and to protect educational pluralism. In the case of conflict between a parental choice and the best interests of the child, however, the child should always be the priority. The right to education thus involves these three principal players: the state, the parent and the child. There is a triangular relationship between them, and in the development of rights-based education it is important to bear in mind that their differing objectives need to be reconciled. In addition, other actors with a significant contribution and responsibility include teachers, the local community, policymakers, the media and the private sector.

### **Judicial interpretation and constitutional provisions-**

Several constitutional provisions protect the children of India. Among them: Article 15<sup>6</sup> affirms the right of the State to make special provision for women and children; Article 24 provides that no child below the age of 14 shall be employed to work...in any hazardous employment; Article 39(e) of the Directive Principles of State Policy provides that children of tender age should not be abused and that they should not be forced by economic necessity to enter avocations unsuited to their age or strength; Article 39(f) requires children to be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and

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<sup>5</sup> Article 51-A(K) of Indian constitution

<sup>6</sup> Indian constitution

youth be protected against exploitation and moral and material abandonment; Article 45 of the Directive Principles of State Policy provides for free and compulsory education for all children until they complete the age of 14.

Prior to the Fifth Five Year Plan, the government's focus was on child welfare, through the promotion of basic minimum services for children. This culminated in the adoption of the National Policy for Children in 1974. The Fifth Five Year Plan (1974-79) saw a shift of focus from welfare to development, and the integration and co-ordination of services after the launch of the Integrated Child Development Services(CDS) 1975. The Sixth Five Year Plan was the period of strengthening child welfare and development. It led to the spatial expansion and enrichment of child development services through a variety of programmes. The focus of the Eighth Five Year Plan period (1992-97) shifted the focus to human development through advocacy, mobilisation and community empowerment. The Government of India has declared its commitment to every child in the Ninth Five Year Plan (1997-2002). But despite these laws, policies and commitments, what is the actual situation of India's children vis-à-vis health, education, early childhood care and protection? The government admits that the task of providing health care to 375 million children is an enormous challenge; especially since one-third of them live in conditions of abject poverty and neglect. The first six years in a child's life are crucial. It is in these years that the physical, cognitive, language and social development of the child is at its peak. Investment in early childhood care and education <sup>7</sup>(ECCE) is essential. Investing in early childhood care and education means: comprehensive maternal care and entitlements; provision of crèches, child care, nutrition; immunisation and health care; pre-school education; protection and care to children; and creating child care services to release girls from sibling care responsibilities, so they can get an education.

In 1993, the Supreme Court clearly declared education a fundamental right. It said, "Though the right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21." In spite of the achievements in health, nutrition and education, the government admits that the special needs and rights of children in difficult circumstances have remained "subdued" in the larger framework of meeting other basic needs of children. The National Plan of Action emphasises the need for tackling the root causes of such situations. The major constraint in providing services is the paucity of reliable data on children in difficult circumstances. Some of the data that is available is as follows, but it must be remembered that these data are guess-estimates and projections:

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<sup>7</sup> Article-45 of Indian constitution

The groups of children who have been included in this category by the Government of India are children in labour, street children, children who are neglected, children who are physically or mentally challenged, destitute children in need of adoption, drug addicts, children in prostitution, children of prostitutes, children of prisoners, refugee children, slum and migrant children and convention on the rights of the child has provisions for all children who need protection. There are about 74.4 million children according to the National Labour Institute, who are neither enrolled in schools nor accountable for in the labour force. These are all potential child labourers. The 45 per cent of children who are out of school are also prospective child labourers.

India has the dubious distinction of having the largest population of street children. Street children suffer from destitution, neglect, abuse and exploitation. It is estimated that in urban areas alone there are 11 million children on the streets.<sup>8</sup> Of them 420,000 street children live in the six metropolitan cities of the country. Children of construction workers and migrant labourers are deprived of health, nutrition and education facilities. Over the years there has been an increase in the number of child prostitutes. Government of India estimates put the number at 400,000. According to UNICEF, almost 15 per cent of prostitutes enter the profession before the age of 15 and 25 per cent enter between 15-18. A number of children in prostitution are children of prostitutes.

According to government estimates, at least 25,000 children are engaged in prostitution in the major metropolitan cities: Bangalore, Calcutta, Chennai, Delhi, Hyderabad and Mumbai. The Central Advisory Committee on Child Prostitution estimates this number at 100,000. Unofficial estimates say India has two million prostitutes, of whom 20 per cent are below 15. Almost all of them became victims of exploitation when they were children, i.e less than 15 years old. According to government estimates, one in every 10 children is born with, or acquires, a physical, mental or sensory disability. So India could have 12 million disabled children.

Although India has a large number of laws to protect and promote the rights of children, children's concerns are viewed primarily as a welfare issue, rather an issue of rights. By developing a legal rights-based approach for children, the Child Rights Initiative (CRI) combats the violation of children's rights and increases their ability access to the legal system.

CRI is a premier agency in the country for providing trainings to police, labour department, civil society organizations, judiciary and government officials on various legislations and policies made for children. CRI's, major activity is to do Public Interest Cases in the Supreme Court of India and various High Courts on the issues affecting children. CRI provides pro-bono legal services to

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<sup>8</sup> A human rights based approach to education, united nations educational scientific and cultural orgation-2007



children in conflict with the law and children in need of care and protection in the Juvenile Justice Boards and Child Welfare Committees all over the country. CRI represents children who are victim of sexual abuse or victim of bonded labour during the trial proceedings in trial courts, assisting the prosecution in the trial CRI has been instrumental in providing assistance in formulation of new laws, rules and policies for children. CRI conducts fact-findings, campaigns, publishes books and poster, and organizes consultations, meetings and Judicial Colloquiums for increasing awareness about child rights among duty bearers and right holders. CRI is part of the Special Taskforce for the rescue and rehabilitation of child labourers and responds to crisis situations through raid and rescue operations. We have set up a Crisis Intervention Center in the Northwest and Central Districts of Delhi, which is also now being replicated in other States. We also monitor the implementation of various schemes and policies related to children. CRI functions in close collaboration with other grassroots organizations in the country.

Public Interest Cases done by lawyers associated with CRI have brought relief to millions of children in this country. ***Bachpan Bachao Andolan Vs. UOI & Ors***, though initially brought in Supreme Court for children working in circus industry is set to mark a tremendous impact on child rights in this country as Supreme Court has expanded the scope of this PIL to include each and every aspect of rights of children. In its latest order, Supreme Court has directed all the States to implement the provisions of Juvenile Justice (Care and Protection of Children) Act 2000 and to constitute Juvenile Justice Boards, Child Welfare Committees, and Special Juvenile Police Units in every district. ***Avinash Mehrotra v Union of India and Ors*** was filed when CRI found a lot of children dying due to school building disasters and fire etc. Schools were directed to follow bare minimum safety standards in addition to complying with the National Building Code of India, 2005, with particular emphasis on the Code of Practice for fire safety in Educational Institutions, as enumerated in the Bureau of Indian Standards. In ***PUCL Vs. Union of India***, Court directed State to ensure the right to food and adequate nutrition for children through the Integrated Child Development Programme (ICDS), which benefitted approximately 8,30,90,382 children of the country between 0 to six years of age. The Supreme Court also directed the State Governments /Union Territories to implement the Mid Day Meal Scheme, ensuring mid day meals to approximately 100 million children across the country. The mid-day meal has been shown to contribute significantly to the lowering of levels of malnutrition among children. ***Forum for Fact Finding and Documentation vs. Union of India***, directions were issued that each state in India notifies the rules for the Prohibition of Child Marriages Act, 2006. Another Supreme Court case ***Sampurna Behura vs. Union of India***<sup>9</sup> significantly changed the scenarios vis- a -vis implementation of the Juvenile Justice Act, as a result of which Juvenile Justice Boards and child

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<sup>9</sup> (2011) 15 SCC 232

Welfare Committees have been constituted in each district of every state in India. CRI has done a number of public interest cases (*Reena Banerjee vs. Govt. of Delhi*) in several states for improving the way child care institutions are being run, significantly improving the quality of care to children in such institutions.

The CRI has saved hundreds of children by conducting rescue interventions in over 170 cases of children being exploited as domestic workers, stopping over 200 child marriages, and facilitating the arrest and prosecution of child traffickers. The CRI has set up a model for legal aid for Juveniles in Delhi, which is being replicated now all over the country gradually. CRI's lawyers have consistently struggled to eliminate anti child practices from functioning of police by initiating legal action in a number of cases where children are illegal detained or tortured at police stations. On the other hand CRI's trainings to police, members of juvenile justice boards, child welfare committees and government authorities have brought a sea-impact on the quality of service delivery to children.

### **Conclusion-**

They are abandoned. They do not get a chance to step in a school. They are left to fend for themselves on the streets. They suffer from many forms of violence. They do not have access to even primary healthcare. They are subjected to cruel and inhumane treatments every day. They are children – innocent, young and beautiful – who are deprived of their rights.

Legislation must ensure the entitlement of all children to compulsory primary education. In some countries, this is provided in the constitution, and consideration may be given to amending constitutions to introduce a universal right to education where it is not provided for. In India, for instance, the Constitution was amended via the 93rd Constitutional Amendment to provide universal, free and compulsory primary education to all children between the ages of 6 and 14. Even in 2004, however, at least 25 countries still had no specified age for compulsory education. Wherever possible, consideration should also be given to including entitlement to secondary education as a longer-term goal. Consideration should also be given to introducing an entitlement to care and education during the early years with family involvement. Elimination of discrimination States need to undertake a review of existing legislation to ensure that no direct or indirect discriminations in the law impede the right to education for all children. Legislative action to protect those children vulnerable to discrimination should include.

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