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## HUMAN RIGHTS THE CHILDREN IN DEVELOPMENT CONTEXT

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### ABSTRACT –

**T**he concept of Human right is as old as ancient civilization Education is a fundamental human rights, every child is entitled to it. It is critical to our development as individual and as societies, and it helps lead the way to a flourishing and fruitful future. The Children are the 'Supreme asset of the nation'.<sup>1</sup> No civilized country can ever develop without proper health and educational development of their children; therefore, the government must divert its policies towards the development of children. The policy envisages covering all children under a comprehensive health programme, provision of nutrition and removal of dietary deficiency, provision of non-formal education, special attention to physically challenged and mentally retarded children and equality of opportunity to all children for their development. These measures were considered urgent because child is the most vulnerable section of the society for he cannot assert his rights on account of physical and mental tenderness, therefore, is exposed to various forms of deprivations such as education, nutrition, health and medical care, shelter, protection against abuse and exploitation. It has been felt for a long time that children be treated humanely and conducive conditions be provided to each and every child to pave the way for his optimum growth and development. But this goal could not be achieved since the societies considered children to be the mere possession of the parents and relatives who own them and the parents and the relatives had a prerogative while dealing with the interests of the children. However, with the advent of the human rights ear after the Second World War it was assumed that all human rights apply to children but on the real plane they were deprived of these basic rights which were sine qua non for fairness and justice to them. So the welfare of the children should acquire the prioritized consideration of the society and the state, which can be achieved only when the rights of the child are addressed specifically in the human rights instruments and constitutional documents of every nation to ensure education, nutrition, health care, safe drinking, housing recreation, parental and social care, protection from deprivations, exploitation and abuse.

**KEY WORDS:-** Development, Education, Nutrition, Health care, Safe Drinking, Housing recreation,

### INTRODUCTION –

Among the various instrument of human rights, the Declaration on the Right to Development<sup>2</sup> unequivocally declares that right to development is a human right. This Declaration came into being almost forty two years after the adoption of the Universal Declaration of Human Rights, according to which human rights comprehend both civil and political rights; and economic , social and cultural rights. There was no ambiguity at that time about political and economic rights being interrelated and interdependent components of human rights in view of the conviction that "true individual freedom cannot exist without economic security and independence."<sup>3</sup> There had been



divergence in the convictions of the world that the economic, social and cultural rights are not fully justifiable human rights but are mere essential claims. Finally, a new consensus emerged in Vienna at the Second UN World Conference on Human Rights in 1993 where it was reaffirmed that "the right to development, as established in the Declaration on Right to Development, is a universal and inalienable right and an integral part of fundamental human rights." It was further declared that "human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of the government"<sup>4</sup> and urged the world community to cooperate in the realization of these rights. Finally, right to development emerged as a human right which integrated economic, social and cultural rights with civil and political rights.

The Declaration on the Right to Development succinctly states that "the right to development is an unalienable human right by virtue of which every human person and all peoples are entitled to participate in and enjoy to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized."<sup>5</sup> Thus, the human right to development is an unalienable right, which cannot be subjected to political vicissitude and thus, cannot be bartered away. Then, there is a process of "economic, social, cultural, and political development," which is recognized as a process in which "all human rights and fundamental freedoms can be fully realized." The right to development is a human right, by virtue of which "every human person and all peoples are entitled to participate in, contribute to and enjoy" that process of development<sup>6</sup>. The phraseology such as "every human person" and "all peoples" used in the Declaration include Children. The Declaration states that it is "the human person" who is the central subject of development, in the sense of the "active participant and beneficiary of the right to development."<sup>7</sup> The process of development, "in which all human rights and fundamental freedoms can be fully realized," would lead to "the constant improvement of the well-being of the entire population and of all individual's, on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from<sup>8</sup>." Further the measures for realizing the right to development shall ensure, inter alia, "equality of opportunity for all" in their access to basic resources, education, health services, food, housing, employment and in the fair distribution of income. The realization of the right would also require that "appropriate economic and social reforms should be carried out with a view to eradicating all social injustices<sup>9</sup>: The Declaration enjoins "all human persons", individually and collectively, "the states operating nationally", and "the states operating internationally" with the responsibility to realize this process of development to which every person is entitled by virtue of his right to development. According to Article 2 (2), "all human beings have a responsibility for development individually and collectively," and they must take appropriate actions, maintaining "full respect for the human rights and fundamental freedoms as well as their duties to the community." Human persons, including children, thus are recognized to function both individually and as members of communities and to have duties to communities that are necessary to be carried out in promoting the process of development.

The Declaration imposes "the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development" on the states.<sup>10</sup> The responsibility of the state is complementary to that of the individual's. The states are only under an obligation for the creation of the conditions for realizing the right and not for actualizing the right itself. It is only the individuals who can realize the right. It is significant to note here that this responsibility of individual to realize one's right to development would require modification in case of children. The states are only enjoined to create conducive conditions at national and international levels. "States have a right and duty to formulate appropriate national development policies" to create favourable conditions within their jurisdictions to ensure the individuals to realize the right, and at the international level they should undertake "all necessary measures for the realization of the right to development," and should encourage popular participation in all spheres." Article 6 requires the state "to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights," . because the implementation, promotion and protection of these right would be essential for realizing the right to development.

The reference is to Articles 1, 55 and 56 of the Charter, which enjoins the states to take joint and separate actions to promote (a) high standard of living, full employment and conditions of economic and social progress and development, (b) solutions of international economic, social, health and related problems, and (c) universal respect for and observance of human rights and fundamental freedoms without distinction as to race, sex,

language, or religion.

Thus, the conceptual proposition of the Declaration is that the right to development is a human right which is a right to a particular process of development in which all human rights and fundamental freedoms can be fully realized. In other words, all the individuals, including the child, must have equal opportunity of access to the resources for development and receive fair distribution of the benefits of development. The right confers unequivocal obligation on individuals in the community, states at the national level and states at the international level to help realize the process of development, in regard to children also.

The covenants on civil and political rights and on economic, social and cultural rights both call for international cooperation. But the Declaration on the Right to Development talks about that cooperation in concrete terms and places obligation on the international community to cooperate to make a success of the process of development together with appropriate policies and measures. Further, combining the right to development with the other rights and manner of exercising it which is consistent with fundamental freedoms envisions an approach to development which elevates the process of its realization to the exercise of a human right.

### **INTERDEPENDENCE OF THE RIGHT TO DEVELOPMENT WITH OTHER HUMAN RIGHTS**

It is difficult to envisage how any individual, more so a child would be able to realize his right to development unless his other human rights impinging upon his potential for development are not safeguarded in substance. The relationship between human rights and development was acknowledged, although vaguely, long ago in the Universal Declaration of Human Rights, 1948. Article 28 declares that: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized." However, the dichotomy between civil and political rights on the one hand and social, economic and cultural rights on the other has started diluting. This distinction has also been rejected by the Charter of the Rights of Man and People adopted in 1981 by the Organization of African Unity. The Charter covers economic, social and cultural rights as well as civil and political rights, thus emphasizing that the two categories of rights are indivisible and interdependent. However, the Vienna Declaration of 1993 reaffirms that progress towards the implementation of the right to development requires effective development policies at the national level and a favorable as well as equitable environment at the international level.

Human rights and development conceived as a joint paradigm is of a recent origin in development theory. It is only in the Nineties that the theory of all human development, on one side, and the recognition of the indivisibility and interconnection of all human rights, on the other, opened the space for such a convergence. The human rights based approach to development is a perspective that considers traditional goals of development as the provision of health, education, food and shelter as human rights. Integration of human rights with the developmental activities means expressing civil, economic and social targets in terms of human rights, which take into account human rights norms in every stage of development. The "Bill of Rights<sup>11</sup>" provides clear indications about how to make projects in health, agriculture, education for the promotion and protection of human rights. The universality of human rights imposes a particular attention to equity and nondiscrimination. Vulnerable groups and minorities become consequently the first reference for human rights approaches. The rights and needs of a particular group affect the development process at every step.

### **DEVELOPMENT OF CHILD AN OVERVIEW**

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations in 1948, which happens to be the first International normative document on human rights. The Declaration contains some specific references about children and their right. Article 25 states that "Motherhood and childhood are entitled to special care and assistance" and further provides that "All children, whether born in and out of wedlock, shall enjoy the same social protection." Article 26, which deals with the right to education, provides to ensure that "parents have a prior right to choose the kind of education that shall be given to their children." However, these provisions were not adequate to address the situation of children as a vulnerable group to ensure their full and healthy development, therefore, the Declaration of the Rights of the Child was adopted by the UN General Assembly in 1959. The Declaration addressed the specific need of the children such as non-discrimination, special

protection, opportunities and facilities for complete development, right to name and nationality, right to social security, adequate nutrition, housing, recreation and medical services, special treatment, education and care of differently-abled child, parental care, free and compulsory education, preference in receiving protection and relief, protection against all forms of neglect, cruelty and exploitation and protection against discrimination. The ICCPR, 1966 and ICSECR, 1966 directly and indirectly protect and promote the interests of the child to ensure its complete development.

The Convention on the Rights of the Child adopted by the General Assembly of the UN in 1989 is a great milestone for the protection and promotion of the child rights. The CRC is the most complete statement of child rights ever made. The convention covers almost every aspect of a child's life. It is the first human rights instrument since UDHR which brings together as inextricable elements of life of an individual human being the full range of civil and political rights, and economic, social and cultural rights. It aims at to create a balance between the rights of children and those of the parents or adults responsible for their survival, protection and development. It contains 41 operational Articles which deal with every aspect of rights of the children necessary for their promotion, protection and development. There are four guiding principles which govern the operation of the Convention such as non-discrimination, the best interest of the child, right to life, survival and development of the child, and the view of the child. The Convention includes civil, political, economic, social and cultural rights. Many rights are similar to those contained in other instruments although there remain some unusual elements. They are civil rights and liberties of the child, right to family environment, right to health, educational rights; right to special protection in emergency, right in relation to the administration to justice, right against exploitation, right to protection against drug abuse etc.

In 1990 the World Summit for children has adopted the World Declaration on the Survival, Protection and the Development of Children. The Programme aims at the implementation of the Convention on the Rights of the Child, children's health and sanitation, optimum growth and development, promoting educational opportunities for all children etc. Thus, in totality the aim of the Declaration is to advance the pursuit of the complete development of the child.

### **PROMOTION AND PROTECTION OF THE RIGHT TO THE CHILD -**

In India besides the Constitution there is a plethora of statutory laws to promote and protect the delicate interests of the child in order to provide him congenial environment and opportunity for the optimum growth and development. Independence ushered in a new era for children. The historical process, and its social, economic and political priorities paved the way for shaping a more coherent concept of childhood located within the family. It further determined the nature of relationship between the child, the family and the state and thus created a national childhood for all children. Correspondingly, the Constitution of India, which came into force in January, 1950, contains provisions for survival, development and protection of children. These are incorporated in Part III and Part IV of the Indian Constitution pertaining to Fundamental Rights and Directive Principles of State Policy.

#### **Constitutional Provisions:**

The Part III of the Indian Constitution, which incorporates the fundamental rights, provides elaborate provisions for the development and protection of the child directly and indirectly. Article 14 of the Constitution declares that the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. The protection of the article is equally available to the child. Article 15 of the Constitution besides prohibiting discrimination empowers the state to make special provisions for the survival, development and protection of children. Article 17 while abolishing untouchability forbids its practice in any form which besides suppressing this social evil advances the cause of the children of that bracket to avail equal opportunity for their development on the nondiscriminatory premise. Article 19 guarantees a number of freedoms to all the citizens, which equally are the guarantees to a child. These guarantees provide those conditions which afford all the requirements suitable for the development and protection of the child. Article 21 guarantees that no person shall be deprived of his life and personal liberty. The term 'life' has been interpreted in the widest possible meaning so as to bring within its ambit almost everything that gives full meaning to enjoy life. The instant constitutional provision has become a spring board for the emergence of many independent fundamental rights which are indispensable

for the development of everyone including the child. Fundamental right to education was carved out of the Article 21, which subsequently prompted the Parliament to incorporate Article 21-A in Part III of the Constitution. Article 23 prohibits traffic in human beings and begar which equally protects the children from such exploitation, while Article 24 prohibits the employment of a child in any factory, mine or any other hazardous employment.

Thus, in totality these two provisions advance the cause of the development of child by protecting him from exploitative practices.

Part IV of the Constitution contains the socio-economic obligations of the state. This part contains a number of provisions which have a direct and indirect bearing on the development and protection of the child to ensure his optimum growth and development in every sphere of life. Article 39 (e) provides that the tender age of children are not abused and not forced by economic necessity to enter avocations unsuited to their age and strength. Imposing a positive obligation on the state to ensure the development of the child Article 39 (f) directs that children are given opportunity and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood be protected against exploitation and against moral and material abandonment. Article 45 provide for the early childhood care and education for all children until they complete the age of fourteen years. Article 46 provides obliges the state to promote with special care the educational and economic interests of the weaker sections of the people. Article 47 directs the state to raise the level of nutrition and their standard of living of its people and the improvement of public health. Last but not the least, Article 51 directs that the state shall Endeavour to foster respect for international law and treaty obligations. This provision has a direct bearing on the child rights since the provision requires the state to respect all the conventions that have been drawn for the protection and development of child under the auspices of the United Nations by implementing them in India.

Article 51-A (k) imposes the fundamental duty on the parents and guardians of the child by providing that "parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years."

### STATUTORY PROVISIONS:

The Indian law regime contains a number of enactments which aim at the protection, promotion and development of the child rights so that the child may not be subjected to deprivations, abuse and exploitation of varied nature and thus paves the way for the development of the child. Prominent among these enactments are: the Protection of Civil Rights Act, 1955 provides, inter alia, for the protection of the children. In 1956, the Suppression of Immoral Traffic in Women and Girls Act was enacted to protect women and girl child from sexual abuse and exploitation. Some of the other legislations enacted in the post independence era for the welfare and the development of the child were the Hindu Adoption and Maintenance Act, Hindu Minority and Guardianship Act, Children's Act, Juvenile Justice Act, 1986, Child Labour (Prohibition and Regulation) Act, 1986, Pre-Conception and Pre-Natal Diagnostic Techniques (Prevention of Sex Selection) Act, 1994, the Infants Milk Substitutes, Feeding Bottles and Infant Foods (Regulation and Production, Supply and Distribution) Act, 1992, the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Juvenile Justice (Care and Protection of Children) Act, 2000, the Commission for Protection of Child Rights Act, 2005, the Right of the Children to Free and Compulsory Education Act, 2009 etc. These legislations aim at to the protection and promotion of the human rights of the child leading to his/her the development. Besides the enactment of legislation having direct or indirect bearing on the issues of child rights and development the Government of India has devised various welfare and developmental programmes and schemes to address the core issues concerning the welfare and development of the child such as pre-natal care, health, disease control, reduction in infant mortality, education, food, nutrition, housing, safe drinking water; and prevention of deprivations, abuse and exploitation such as abolition of child labour, child marriage, human trafficking, sexual abuse, sale of children, complete abolition of female feticide, female infanticide, neglect, care and protection of juvenile delinquents, vagrancy, truancy, begging, alcohol abuse.

### ROLE OF JUDICIARY

The Indian judiciary has strongly buttressed the cause of the rights of the children to pave the way for their complete development by realizing them the human rights on the premise that the human rights equally belong to the children. In a significant judgment in PUCL v. Union of India<sup>12</sup>, the Supreme Court held that the people who are

starving because of their inability to purchase food grains have the right to get food under Article 21. The Court held that under such a situation food grains be provided to all those who are aged, infirm, disabled, destitute women and men and destitute children through PDS shops to prevent starvation and malnourishment. In *Parmanand Katara v. Union of India and others*.<sup>13</sup> while reading the right to health within Article 21 of the Constitution, the Supreme Court directed that every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life. The court held that every doctor has the professional obligation to provide medical services with due expertise for protecting life. Emphasizing on the importance of right to education in the complete development of the child the Supreme Court in *J.P. Unnikrishnan v. State of Andhra Pradesh*<sup>14</sup> observed that education is a preparation for a living and for life' and concluded that 'the right to free education up to the age of 14 years is a fundamental right.' In *M.C. Mehta v. State of Tamil Nadu*,<sup>15</sup> the Supreme Court has directed the respondent state to withdraw children from hazardous working occupation and rehabilitate them. The court further directed that positive steps should be taken for the welfare of such children as well as for improving the quality of their life. The apex court on a PIL seeking enforcement of the right to education of every child by abolishing child labour in all forms issued notices to the respondent governments. The court observed that after the Constitutional amendment providing for compulsory education there could not be child labourers. They have to be in schools.<sup>16</sup> In *Krist Pereira v. State of Maharashtra & others.*,<sup>17</sup> wherein the death of a three year old boy child in Bhiwandi Remand Home was agitated. The Bombay High Court constituted an Expert Committee to examine the conditions of Juvenile Homes in the state of Maharashtra and the reports submitted were extremely distressing and revealed the pathetic conditions of various Homes in the state. The Court has observed and directed in its judgment that the Homes only provide some shelter and nothing else. There is hardly any attempt to educate and rehabilitate the juveniles by providing them proper schooling or modern vocational training. The court directed that these Homes should provide all the amenities befitting to the dignity of life and provide for the welfare of the child including health, nutrition, education, recreation and all the welfare measures that could ensure his development. In *Bandhua Mukti Morcha v. Union of India*'s<sup>18</sup> The Apex court directed that the employers of children below 14 years must comply with the provisions of the Child Labour (Prohibition and Regulation) Act, providing for compensation, employment of their parents and their education. In the case of *The Public at Large v. State of Maharashtra & others*<sup>19</sup>. The Bombay High Court taking suo moto notice of a newspaper article which revealed that minor girls were illegally confined and forced to be sex workers, directed the state government, inter alia, to rehabilitate the rescued sex workers including children so as to enable them to acquire necessary skills to have alternative source of employment. The Supreme Court of India in *Lakshmi Kant Pandey v. Union of India*<sup>20</sup> laid down normative and procedural safeguards to be followed during inter-country adoptions for the welfare and betterment of the child so that the child may not be neglected or abandoned or subjected to moral or sexual or forced labour. It is suffice to say here that the Indian judiciary has given beneficial interpretation of the letter of law in favour of child so that their best interests may be protected and promoted to afford them full opportunity for development. In *Avinash Mishra v. Union of India*, the Supreme Court directed the respondents to ensure education with safety. In this case 900 children were charred to death and buried where the roof of a school collapsed. Here the court emphasized that though right to education is a fundamental right but while imparting education safety of the children should be taken care of. Similarly, in the case of *PUCL v. Union of India* the court directed the respondents to take necessary steps to prevent malnutrition of the children.

## CONCLUSION

No society can claim to develop without educating its children. The child is the supreme asset of a nation, therefore, right to development of the child should not only be protected but it should be buttressed to realize the optimum development of the child. The development of a nation can only be assessed with the fact as how the delicate interests of the children are taken care of by the planners of that country. The greater onus for the government lies on the fact that this segment of the population cannot assert their rights out of their own and they are considered the possession of the parents who exercise their absolute prerogative over their children. In this state of conditions and ideology it becomes urgent that the interests of the child should be taken care of by the state and protective measures should be taken in the event of deprivation and their abuse exploitation. The future of a nation depends on the state of the children of that Country since the destiny of the nation quiver in the hands

of the children. Therefore, it becomes the basic duty of the state to provide suitable conditions for the development of the child. The minimum facilities of health, nutrition, education, facilities for recreation should be provided to the children as a matter of developmental right of the child. There are plethora of laws for the development and protection of the children but the implementation of these laws is very dismal and pathetic. Since the state is the *paren patriae*, therefore, it is the non-derogable duty of the state to ascertain the development and protection of the childhood by implementing the protective laws rigorously. Complete protection of children should be ensured from want, illiteracy, material deprivation, sexual abuse and exploitation. Children should also be protected from juvenile delinquency, vagrancy, truancy, begging and alcohol abuse and all measures should be taken for their reformation and rehabilitation as an asset of the society.

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