

Child Welfare

¹Harishankar

²L.C. Sahu

¹ BJR Institute of Law, Bundelkhand University, Jhansi (U.P.)

² BJR Institute of Law, Bundelkhand University, Jhansi (U.P.)

Received: 01 Jan 2018, Accepted: 15 Jan 2018 ; Published on line: 31 Jan 2018

Abstract

The Constitution of India is primarily a social document whose objective is to develop a just social order incorporating all the facts of the society [1]. The Constitution of the country contains very valuable instructions for the future of the country i.e. the safety of the children. The framers of the Constitution were smart enough to understand this problem which the country is facing after its independence. Therefore the constitution includes these provisions for the welfare of children.

Key words :- Child Welfare, Constitutional philosophy, Fundamental Rights, enforcement.

Introduction

Constitutional philosophy should be allowed to be a part of every person's life in this country and only then the constitution can reach all and the ideals of the constitution-makers can be achieved as people will be closer to the goal set by the constitution- an ideal situation But at present, it is too far away [2]. The Constitution of the country includes the rights of children in Part III and Part IV of the Constitution. Part III of the Constitution of India deals with Fundamental Rights and is said to be a great chapter on freedom. It excelled the constitution by guaranteeing against state interference some rights important to the freedom and well-being of the people [3].

Fundamental rights are enforceable in courts. Article 32 provides a remedy for filing writs before the Supreme Court for enforcement of fundamental rights. Similarly, Article 226 provides for the means for filing writs before the High Courts of various states for enforcement of Fundamental Rights.

Article 1 (1) All citizens shall endeavor to ensure that children are born and brought up in good mental and physical health.

(2) All children shall equally be afforded the guaranteed level of life and be kindly treated.

Article 2 - The national and local governments shall be responsible for bringing up children in good mental and physical health, along with their guardians.

Article 3 - The provisions of the preceding two Articles constitute the basic philosophy to guarantee children's welfare and this philosophy shall be consistently respected in enforcing all laws and regulations on children.

The explicit provisions of the Constitution dealing with child welfare are as follows:

1. Protection Guaranteed under Article 15(3)

According to Article 15(3), the state can make special provisions for children. This reflects the concern of the framers of the constitution that the state endeavors to promote the welfare of children without any discrimination. It means that the founding fathers add to this affirmative provision to enable the state to legislate for the welfare of children and to give them precedence over other individuals in the society [4]. The object of the adoption of Article 15(3) is to avoid any controversy and to demonstrate the concern of the framers of the Constitution that the State shall endeavor to promote the welfare of children. Acknowledging the repulsion for the seclusion of children and the exploitation of underage children, the Founding Fathers added such a uniquely affirmative provision to enable the state to legislate for the welfare of children and provide them Gave preferential treatment over other persons in the society [5]. This point was confirmed by a judicial pronouncement in the case of *Dattatreya Moti Ram v State of Bombay* [6] Chagla, CJ held that the State could discriminate in favor of women and children against men. The State also held that the State could not discriminate in favor of men against women and children [7] In *Smt. Choki v. the State of Rajasthan*, [8] The Hon'ble Court upheld Section 497 of the Code of Criminal Procedure, 1898, which prohibits the release of any person on bail except women and children and sick men below the age of 16 years. The court said that the state can make special provisions for the benefit of women and children.

2. Child's Right to Education

Article 21 [9] is a very important article regarding children because the Supreme Court has declared the right to education as a fundamental right in 1993 while interpreting Article 21. A new Article 21A was added in the Constitutional (86th Amendment) Act, 2002 [10] Which makes education a fundamental right for all children in the age group of 6-14 years. The Child (Labor and Prohibition) Act, 1986 does not talk about the complete prohibition of child labor rather it regulates child labor on certain campuses and Article 21 is talking about compulsory schooling and if Article 21 is read with the Children (Labor

and Prohibition) Act. , both cannot walk together. Therefore, it is better to amend the Children (Labor and Prohibition) Act in light of Article 21. In *Unni Krishnan v. State of Andhra Pradesh* [11], The Supreme Court has recognized education as a fundamental right for all children between the ages of 6-14.

3. Right against Exploitation

Although Article 23(1) [12] does not specifically refer to children, it still applies to them and is more relevant in their context as children are the most valuable section of society. It is a known fact that many children are also exploited by the parents who exploit them because of their poverty and in the absence of the parents their exploitation by close relatives goes even deeper. They are deprived of education, made to do all sorts of work injurious to their health and personality [13].

It is designed to protect the individual not only against the state but also against other private citizens. Article 23 is not limited in its application against the State, but it prohibits "the traffic of men and forced labor and other similar forms of forced labor wherever found". "Begar" (labor or service that a person is forced to perform without receiving any remuneration for it) is simply a form of forced labor. This article prohibits not only "begar" but all other forms of forced labor in whatever form it may manifest, as it is a violation of human dignity and contrary to basic human values [14].

4. Protection under Article 24

Under Article 24 [15], the Constitution of India lays strong emphasis on the protection of minors of tender age group and gives them the fundamental right to education and welfare. It says, "In *People's Union Vs. Union of India for Democratic Rights*" [16].

The Supreme Court held that though the Children's Employment Act, 1938 did not cover construction work on projects as the process was not specified in the Schedule to the Construction Industries Act, yet, such construction was a hazardous occupation and was under Article 24, under the age of 14 years. Children of age could not be employed in hazardous occupations. A child's right against exploitation under Article 24 was enforceable in the absence of law enforcement and also in a public interest proceeding [17].

Laws like Child Labor (Prohibition and Regulation) Act, 1986, Merchant Shipping Act, 1958, Motor Transport Act, 1961, Apprentices Act, 1961, Beedi and Cigar Workers Act, 1966, Plantation Labor Act, 1951, Factories Act, 1948, Workers To deal with the employment and working conditions of the U.S. and to fix the qualifying age as 14 for both boys and girls would directly contradict this fundamental

right guaranteed under Article 24 and deserves to be declared unconstitutional. Article 24 read with Article 21A, read with various judgments of Supreme Court on right to education of children and these laws regarding the prohibition of child labor is in complete violation of these laws as they allow children to be allowed to work in factories and other places of work. areas are allowed to be employed. The argument is that Article 24 permits the employment of children in non-hazardous employment, as this article states that no child below the age of 14 years shall be employed to work in any factory or mine or any other hazardous employment will be done.

5. Special Protection under Directive Principles of State Policy

Initially, it was thought that the Directive Principles of State Policy contained in Part IV were merely a sacred obligation on the part of the State and could not be enforced in any court. Article 37 itself states that these articles cannot be enforceable in any court, but still the principles laid down in it are fundamental in the governance of the country and it was felt that it was the duty of the state to apply these principles in making laws [18].

Article 39(e) & (f) [19] direct the state to evolve a policy eliminating the abuse of tender age to free children from the circumstances forcing them to enter into avocations unsuited to their age or strength. The state is also directed to create social and economic conditions and infrastructure for the healthy development of children and to provide facilities and a climate for the exercise of liberty and maintenance of respect. The state is further directed to protect children from exploitation and moral and material abandonment [20].

The Supreme Court in *Sheela Barse v, Union of India* [21] held that Article 39 (f) of the Constitution provides that the State shall direct policy towards achieving the goal that children are given opportunities and facilities to develop in a healthy manner and conditions of liberty and dignity, and that childhood and youth are To be protected from exploitation and against moral and material abandonment. The Supreme Court further observed that though various states have enacted the Children's Act to fulfill the constitutional obligation for the welfare of children under Article 39(f), yet it has not been implemented in some states and the Court has directed That such beneficial laws should be enforced. Administered by force and without delay.

Under Article 45 [22] a duty has been imposed on the State to provide free and compulsory education to all children till they complete the age of 14 years within ten years from the commencement of the Constitution. This Directive Principle shows that it is not limited to primary education only, but also extends to free education at the age of 14 years. Article 45 is thus supplementary to Article 24 on the

ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions [23].

Article 45 provides for compulsory and free education for children up to the age of 14 years. One of the objectives of these articles is that the state should provide free and compulsory education to all.

References

- [1] Austin, Granville, "The Indian Constitution Cornerstone of a Nation" Punjab University Law Review (Special Number), March 30, 1974, p. 50.
- [2] Balbir Kaur v. Steel Authority of India Ltd., AIR 2000 SC 1596.
- [3] G.B. Reddy and, Muhd. Saheb, Constitutional of India and Professional Ethics, I.K. International Publishing House, Pvt. Ltd., 2006, p. 22.
- [4] Id, p. 64.
- [5] Id, p. 108.
- [6] 55 Bombay, LR323.
- [7] Ibid.
- [8] AIR 1957 Raj.10.
- [9] Article 21 provides for the protection of life and personal liberty of the people including children.
- [10] Article 21A explains that- the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state may, by law, determine.
- [11] AIR 1993 SC 2178.
- [12] Article 23 explains- "Traffic in human beings and beggar and similar forms of forced labour are prohibited and any contravention of this provision shall be an offense punishable in accordance with law".
- [13] V.N. Shukla, The Constitution of India, Eastern Book Company, Lucknow, 2001, p. 310. [14] Thomas Paul, "Judicial Response to Child Labour in India: A Human Rights perspective" Asia Law Quarterly, Vol. 1, No. 1, pp. 63-86.

[15] According to Article 24 - No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

[16] (1982)3 SCC 235; AIR 1982 SC1473.

[17] Retrieved from [www, hr.cr.org](http://www.hr.cr.org), last visited on 24-5-2013.

[18] Id, p. 62.

[19] Article 39(e) of the Constitution enjoins that: The state shall direct its policy towards securing the health and strength of workers, men, and women, and the tender age of children are not abused and the citizens by economic necessity to enter avocations unsuited to their age and strength. 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 children and youth are protected against exploitation and moral and material abandonment.

[20] Id, p. 117.

[21] AIR 1986 SCC 596.

[22] Article 45- The state shall endeavor to provide within ten years from the commencement of this constitution for free and compulsory education for all children until they complete the age of fourteen years.