

**Child Rights and Disability: A Historical and Contemporary
Perspective**

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Abstract

Protecting and making human rights available for every individual on the planet is a herculean challenge in itself and doing so for individuals who cannot defend their rights on their own is difficult still. Children are one such section of the society who are particularly vulnerable to human rights violations. They have no voice in political process. They participate directly in no lobbies on their behalf. At a time when they are particularly weak and easily intimidated and manipulated, their rights are particularly vulnerable to infringement. As a result governments across the globe have considered it necessary to national legislations to protect their rights. Even more vulnerable are children with disabilities are often discriminated against and deprived of their normal activities of the childhood. Throughout history certain basic amenities like education, healthcare, family life, opportunities to play and work have been denied to them. They have experienced and lived a life of social exclusion which clearly demonstrates violation of their rights as equal human beings and members of the society. The paper examines the established framework for protection of rights of these differently-abled children from historical as well as contemporary perspective.

Keywords: Child rights, disability, child rights convention, disabled children

Introduction

Children constitute one of the largest and the most vulnerable minority group. They have no voice in political process. They participate directly in no lobbies on their behalf. At a time when they are particularly weak and easily intimidated and manipulated, their rights are particularly vulnerable to infringement. As a result governments across the globe have considered it necessary to national legislations to protect their rights. Similar steps have been taken by the government of India.

Nelson Mandela the iconic South African leader has termed the condition of children in a society as the keenest revelation into its soul. Every ten years through National Census the country bares its soul and 2011 census revealed that children in the age group 0-6 years number around 158 million. They would form the cornerstone of country's future progress in the years to come. Hence there lies a huge onus on the Indian state to ensure that its children are properly cared for and brought up in a manner that provides them adequate training, education and guidance, so that may serve properly their role as responsible and enlightened citizens of the country. Realising this, the Government of India adopted a policy for welfare of children, the Government's concern and vision is aptly summed up by the following policy statement –

“The nation's children are a supremely important asset. Their nature and solicitude are our responsibility. Children's programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.”ⁱ

Definitions of ‘Child’

Age limits are a formal reflection of society's judgment about the evolution of children's capacities and responsibilities. Almost everywhere, age limits formally regulate children's activities: when they can leave school; when they can marry; when they can vote; when they can be treated as adults by the criminal justice system; when they can join the armed forces; and when they can work. But age limits differ from activity to activity and from country to country. The legal conception of a child often varies depending upon the purpose. According to Article 1 of the UNCRC, 1989, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”. The article thus grants the discretion to individual countries to determine by law whether childhood should

cease at 12, 14, 16, or whatever age they find appropriate. In India, the age at which a person ceases to be a child varies in different laws.ⁱⁱ Under the Child Labour Prohibition and Regulation Act, 1986, a child is a person who has not completed 14 years of age. The Constitution of India protects children below the age of 14 from working in factories and hazardous jobs. But below 14, they can work in non-hazardous industries. For the purposes of criminal responsibility, the age limit is 7 and 12 under the Indian Penal Code, 1860. For purposes of protection against kidnapping, abduction and related offences, it's 16 years for boys and 18 for girls. For special treatment under the Juvenile Justice (Care and Protection of Children) Act 2000, the age is 18 for both boys and girls. And the Protection of Women from Domestic Violence Act 2005 identifies a child as any person below the age of 18, and includes an adopted step- or foster child.ⁱⁱⁱ It could be concluded that in India the most acceptable age for an individual to be considered a child, both legally and socially, is 18 years of age.

Historical Perspective on Child Rights

Maria Montessori in her book *Secrets of Childhood* accusing the society of neglecting the children says that all adults stand accused and the society responsible for the welfare of children has been put on trial. The voice of the Last Judgment is bound to ask us: "What have you done to the children that I entrusted to you?"^{iv} The future may be less apocalyptic than what Montessori paints but it does bring out the special place children enjoy in the human society and more importantly on our collective conscience.

The tragic events of First World War stirred the conscience of the world. Children and women were primary victims of this bloodshed. Over 500,000 children lost their fathers.^v In order to prevent the occurrence of such incidents in future, the League of Nations was constituted. It was the League that acknowledged the gravity of the atrocities committed upon children in both life and death. This realization culminated into the Geneva Declaration of the Rights of the Children 1924, drafted in Geneva in 1923 by Eglantyne Jebb, founder of Save the Children^{vi}. This historic declaration recognised and affirmed for the first time the existence of rights

specific to children and made adults guardians of these rights. The declaration contained a mere five paragraphs, but it covered a full array of concerns, including food, health care,

delinquency, shelter, emergency relief, work, exploitation, and the "child's service to mankind."^{vii}

Along with the covenants the role performed by the subsidiary organs of the League is also commendable. International Labour Organisation (ILO) started making efforts to curb child labour which had become a common practice after industrial revolution.

Even though League of Nations was making considerable progress on the social and human rights front, its political failures led to another World War in 1939. As a result of this it was replaced by another world body in the form of United Nations on 24 October 1945. The United Nations continuing the work of the League gave special importance to child rights within its human rights framework. It immediately took steps to protect children. At the end of 1946 the United Nations created the United Nations International Children's Emergency Fund; in 1953 it was renamed UNICEF and made a permanent part of the UN system. The creation of agency for the preservation, development, and well-being of children was in recognition of the fact that the dangers facing children did not end with the war.^{viii} Apart from numerous other initiatives UNICEF also runs the International Child Development Centre established in Florence in 1988. It undertakes policy analysis and applied research, provides a forum for international professional exchange of experiences, and disseminates research emanating from its activities.^{ix}

Historical Evolution of Child rights legislations in India

The oldest exclusive legislation pertaining to child rights is the Guardian and Wards Act of 1890. The act specifies qualifications for the appointment and removal of guardians for children by the courts.^x After that a number of Acts were passed that focused on making qualitative improvements to the lives of children. Some noteworthy Acts are as follows -

- a. The Child Marriage Restraint Act, 1929 - it fixed the age of marriage for girls at 14 years and boys at 18 years. It came into force six months later on April 1, 1930.
- b. The Immoral Traffic (Prevention) Act, 1956 - It is an act drafted to ensure India's compliance to the International Convention on the prevention of Immoral Traffic signed at New York on the 9th day of May, 1950. Along with laying down the terms of punishment the act also lays down clear definitions for terms such as child, brothel, prostitution etc. to make enforcement easier.

- c. The Child Labour (Prohibition and Regulation) Act, 1986 - The Act prohibits the engagement of children in certain employments and regulates the conditions of work of children in certain other employments. As per this act no child shall be employed or permitted to work in any of hazardous professions and processes.

History of Global Disability Rights Movement

Historically and even today a commonly used term for the especially abled is 'crippled'. The word carries a very negative connotation and evokes the image of a disfigured person in a state of helplessness. Use of such terminology for the differently abled betrays a social stigma that has been associated with disability since times immemorial.

A marked shift in the societal attitude towards the disabled was noticed in the latter half of the twentieth century. The awareness about the fact that it is a undemocratic practice by the able-bodied people to be making important decisions concerning the lives of the disabled people did not come until the disabled people raise their voice against the age-old discrimination and segregation. The research conducted by Miller and Gwyne (1972) revealed the dependence of the disabled on others for cure and for permanent care. This prompted them to declare the differently abled as 'socially dead'

The situation continued until the 1970s and resulted in the marginalization of the disabled people. Rising consciousness among the disabled community lead them to develop their own interpretation of the situation. This paved way to the growth of the new social theory of disability and of an argument on right to exercise control over their own affairs and sports services.^{xi}

As a result of several scientific and social advancements, an entirely new concept of welfare with regard to the disabled has emerged which has also resulted in the gradual awakening of the society towards the rights of the disabled and on the other hand, for the creation of an entirely new consciousness among the disabled themselves towards their rights and obligations. The new approach for the welfare of the disabled strives for the socio-economic integration of the disabled in the mainstream.^{xii}

In disability studies, there are two prominent models. The medical model of disability and social model of disability.

The medical model of disability views disability as something that whenever possible, be cured. As a result, the model treats people with the impairments as victims and patients; words such as incurable, suffering, wheelchair-bound and handicapped are associated with this approach. This approach is primarily concerned with the condition rather than the person. It is considered to be oppressive by many disabled persons.^{xiii} Disability activism that gathered steam in the 1960s and 1970s vehemently challenged this model and the common traditional perception of the white, middle- class, male “abled” body as the “normal” body for medical observation, calling attention to the inappropriateness of scientific knowledge about “sickness and diseases” in the context of disabilities. This emergent notion of self- advocacy was reflected in the motto of the disability rights movement during the drafting process of the Convention on the Rights of Persons with Disabilities— “Nothing About Us Without Us!”^{xiv} It is this struggle that was instrumental in the adoption of the Convention on the Rights of Persons with Disabilities by the United Nations General Assembly on 13 December 2006. The convention has many firsts to its credit it is the first human rights treaty to be adopted in the twenty- first century; the most rapidly negotiated human rights treaty in the history of international law; and the first to be adopted through lobbying conducted extensively through the means of Internet.

History of Disability in Indian Scenario

India is a very diverse country with a population of 1.2 billion people. As has been discussed above religious and social views about disability vary greatly across the population. A firmly implanted staunchly practiced caste system and the view that disability is a form of retribution for past sins has historically hindered the development of a sympathetic attitude towards the disabled in the Indian society. The popular images in mythology attest to extreme negativity associated with disability in India. While sex selection is a cause for concern for social activists, killing imperfect children will not even count as a crime. The general response of the nondisabled world ranges from pity and charity to hostility, anger, banter, and ridicule. Another challenge is presented by the fact that disability rights in contemporary India largely remains a borrowed concept from the west. As a result of this, the imported packages of “nothing about us without us,” while perfectly appropriate in some contexts, are universal solutions that ignore the specifics of the Indian dilemma.

The concept of disability is directly linked with societal attitudes towards the disabled persons. Since the societal attitudes have undergone changes throughout the various states of social evolution, the concept of disability has also changed accordingly. The traditional attitude towards the disabled is that of sympathy, pity and charity. They have been and in many ways are still considered to be individuals incapable of living an independent and productive life.^{xv}

People with disabilities constitute the largest minority group in the world. As a group they are deprived of services and facilities available to the nondisabled and, as a result of which, they are the least nourished, the least healthy, the least educated, and the least employed. They have a long history of isolation, neglect, segregation, poverty, deprivation, charity and even pity. Unfortunately, the plight of the disabled in India is not much different.^{xvi} Indians, in general, have an ambivalent attitude towards people with disability. When dealing with someone with disability, people find themselves in a conflicting situation and feel anxious. The theme of divine retribution is common among Indians, disability is considered to be a way of awarding punishment to the sinners of previous birth by God. The other notion that commonly persists is that pain in the form of disability is a way of God to test the resilience of people. Thirdly it is believed that charity and compassion towards the less fortunate in this case the disabled by the fortunate would earn the latter some kind of reward in future. *Manusmriti* the ancient charter of social conduct asked the people to spare a part of the material resources for the hapless fellow beings, *Dharmashastra* called upon all householders to look after the weak and the disabled. This was supposed to earn them a place in heaven.^{xvii}

In modern era, first organized attempts to educate differently-abled children were made by Christian missionaries when they established schools. The first school for blind children was established by an English missionary known as Annie Sharp in Amritsar in 1887. Interestingly due to a dearth of specific methods pedagogy for these children in the nineteenth century, blind children were casually integrated with sighted children, picking up whatever they could from oral repetition, which was the major tool of teaching.^{xviii}

Two more schools for the blind - Calcutta blind school in Calcutta and school for the blind in Palayamkottai - were established before the turn of the century. By 1944 undivided India had 32 such schools and by 1947 that number had gone up 6 times.

It is interesting to note that only 10% of the schools for the blind managed by the central or the state government while the rest of the schools *varan* by voluntary associations or agencies receiving partial assistance from the government.

The first school for the deaf was set up in Bombay in 1885 and by 1947 the country had 35 such schools. Just like as if the case of the blind, majority of the schools for the deaf were operated by voluntary agencies. Prior to 1947, there were only two school for the mentally retarded India. One was situated in Ranchi and the other in Bombay. Until the early 1960s there was no centre for the training of the teachers of the blind. The first such institute was established at Palayamkottai by the name of national academy of teachers of the blind.

Post-independence, India followed the policy of welfare, the National Council for Handicapped Welfare was set up to frame policy guidelines for the entire country and to ensure the speedy implementation of disability programmes. This Council consisted of central and state ministers and rehabilitation experts, regulated the activities of the central and state governments and of voluntary sectors. ^{xix}

The Teachers Training College for the deaf at Lucknow was setup in 1948. Handicapped children have traditionally been placed in special Residential School. Such a system has a number of disadvantages. Rural children are uprooted from their native environment. Handicapped children are separated from their parents leading to their elevation from the community. Residential schools are also more expensive and only a small number of such children can afford them. To reverse this trend, in the fifth plan the Government of India offered hundred percent assistance to State Government for initiative programs of integrated education. This is was later altered to include 50% sharing expenses between the central and the state governments.

Contemporary Measures for Disabled Children in India

Attempt have to be made to draft policies and initiatives for the differently-abled that revolve around the Indian sensibilities, beliefs and culture. If the negative aspects associated with the disability by the general masses are to be challenged they are to be challenged from within, any attempt to impose values that are perceived to be western or imported are not likely to have the same effect. Realizing this the Government of India has made many efforts in the recent years the Indian state has adopted a proactive role in accepting a greater role in the welfare of the differently abled. This has prompted the government both at the centre and the state level to take up a number of initiatives which can lessen the burden and struggles of the differently-abled and their guardians. In 2016 the Lok Sabha passed "The Rights of Persons with Disabilities Bill 2016. This act replaced the PwD Act, 1995, which was enacted twenty one years ago. "The types of disabilities were enhanced from 7 to 21.

Apart from this, an effort has been made to bring more and more differently-abled individuals, especially children in the folds of education and provide them with facilities which are at par with those enjoyed by their peers. *Sugamaya Pustakalaya* has been the culmination of all such efforts. It is an online platform that makes available reading content to disabled people. The library has publications on diverse subjects and languages in multiple accessible formats. Books are available in digitally accessible formats for the visually impaired. The plan has a vision to provide over 2 lakhs books in diverse languages and integrate libraries across India and the globe, including the largest international library, 'Bookshare'.^{xx}

Sarva Shiksha Abhiyan (SSA) is the national flagship programme launched in 2001 for achieving the goal of universalization of elementary education through a time bound approach in partnership with states and local bodies. It is also an attempt to provide an opportunity for improving capabilities of all children aged 6 to 12 years. The trust of SSA is providing inclusive education to all children with special needs in regular schools.

At an international level too, India is an active promoter and advocate of disability rights. It is party to a number of global initiative, such as 'Declaration on the Full Participation and Equality of People with Disabilities in the Asia Pacific Region' (2000). India is a signatory to the 'UN Convention on the rights of Persons with Disabilities' (2006). India is also a signatory to the 'Biwako Millennium Framework '(2002) for action towards an inclusive, barrier-free and rights-based society.

Conclusion

Childhood has always been imagined as a time of carefree bliss, a time during which foundations of each person on the planet is laid. The environment a child gets, experiences he/she has and the persons he encounters leave an everlasting impression on his personality for the rest of his life. This is why this time needs to be cautiously guarded against any kinds of traumas or exploitation as the younger the children, the more vulnerable they are physically and psychologically and the less they are able to fend for themselves. In almost every society this role is performed by parents and families of children. But not all children are fortunate enough to receive an environment which is conducive to provide appropriate opportunities for development. The need to protect some children is certainly greater than others due to their specific psychological, physiological and socio-economic scenarios. They are more vulnerable in terms of the risk to their right to survival, development, protection and participation.

The issue of protecting child rights becomes even more challenging when the child happens to be disabled. In India and much of South Asia, disability is largely seen as a product of cultural impediments such as beliefs and stereotypes as well as structural impediments like poverty, lack of development, illiteracy, unemployment and caste, class and gender barriers, persons with disability are marginalised in education, employment, mobility and other significant life areas. The meaning of disability in India is inferred in terms of a basic struggle for survival and cultural understanding.^{xxi}

At the national level, in its endeavours to better promote and safeguard the rights of the differently abled, the Indian Government should adhere to following points –

- The differently abled community should not feel left out of the decision making process. Policies should be drafted and adopted in an inclusive and participatory manner.
- The risk of differently abled children being left out from the policy making process is very high hence, there is a need for sensitivity on the part of the Government and vigilance from various non-governmental agencies to ensure that not only the policies and programmes for the differently abled children are properly implemented but also their active participation.
- As mentioned that disability is a state subject and offers a bright venue for both the centre and the states to co-operate in a meaningful manner. Regular inspection by international national and state bodies can have a positive impact in ensuring compliance to established norms.

Last but not the least is the responsibility of the society and each and every individual to not only empower the differently abled individuals but also assimilating them in the society to the maximum extent. This can only happen when we as a society stop viewing disability as a suffering or a challenge and accept it as just another ability.

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