HUMAN RIGHTS OF A CHILD: INHUMANITY TO HUMANITY

Mohak Mittal[1] and Ruchi Nehra[2]

Abstract

"We declare that human rights are for all of us, all the time: whoever we are and wherever we are from; no matter our class, our opinions, our sexual orientation", said the former UN Secretary General- BAN KI-MOON.

Human rights are the rights possessed by an individual as an aftermath of being a human. As it is believed that Children form the one-third part of the population of the world, they deserve to stand on the same dice as the other population and must also receive the privilege of human rights as the other ones being a human. They are entitled to have certain special rights being the vulnerable part of the society. But in today's contemporary world this tender portion of population is being exploited in many different and dangerous ways, which parallel to this violates their human rights too. The children suffer from the ferocious treatment in society every day.

The rights of the children have always been the most affirmed ones. The Convention on the Rights of the Child has played a crucial role in putting all the issues related to the children on the globe. This convention defined Child's Rights which encompass freedom of children, family environment, their basic healthcare, education and welfare. These human rights should be provided to children in the four aspects of life- cultural, social, economic and political.

Thus, this paper will deal with the rights of a child as a human, which includes the rights like- Right of association with parents, Right to self-identity and Right to basic needs and amenities like education, physical health, freedom from discrimination on basis of race, gender and national origin. This paper will also provide a detailed description of the "Convention on the Rights of The Child, 1989".

[1] Student, Banasthali Vidyapith
[2] Student, Banasthali Vidyapith

INTRODUCTION

"*Human Rights are not a privilege conferred by government. They are every human being's entitlement by virtue of his humanity."*By Mother Teresa

What is a HUMAN RIGHT? The answer to this question is very simple, that a right given to every human of this earth being a human is a Human Right. The concept of Human Rights evolved in year 1948 by UN's Universal Declaration of Human Rights.

"A small body of determined spirits, fired by an unquenchable faith in their mission can alter the course of history." By Mahatma Gandhi

A child is a person who forms the most soft and tender part of humankind. In this contemporary world, children makes one-third of the total population and enacts a very influential role in at the theatre called society. To know further about Child, we must be well versed with the definition of Child. A child is any human who occupies the stages between birth and puberty. Legally, a child is refereed as a 'Minor' (not attained the age of majority). During the 16th and 17th centuries, the society began to recognize childhood not as replica of adulthood but as a community with unique traits with a bit of maturity, requiring love, care and protection from the elder part of the society.

"*The rights of every man are diminished when the rights of one man are threatened*." By John F. Kennedy

Eventually, a child is innocent-insensible who has been oppressed since the beginning of the century, who needs to be cherished. According to the analysis over the world, it has been found that 1out of every 3 girls and 1 out of 5 boys are sexually exploited before they attain the age of 18.Thus for the purpose of ensconcing the descendants of the future the concept of Human Rights for a Child was evolved. This notion is elaborated further.

HISTORICAL ADVANCEMENT

The historical evidence of children's rights can be collected from the 19th Century prior to which, no such instruments were present for the protection of children. Till then the parents even had the power of life or death of their children. With the end of 19th century and beginning of the 20th century, people on the globe realized that children need to be protected and they should have certain rights. This campaign was first started by the French which lead to encouragement of various legal texts all over the globe such as in Europe; certain laws were passed regarding the protection of children from child labour and right of education for children.

CC BY-NC 4.0

Forwarding towards the 20th century more people across the world got awared about the rights of the child which was traced by the establishment of different other rights against exploitation in the social, judicial and medical field. Being still with 20th century, in 1919, the first international organisation, the 'League of Nations' started giving thoughts over the importance of this concept and effectively marked this by the amplification of a committee for child protection. This organisation also adopted the first international treaty 'The Declaration of the Rights of the Child' also called as the 'Geneva Declaration' dated September 26, 1924 which concerned about children's rights. This treaty consisting of 5 Chapters enhances the particular rights of a child and the responsibility of the adult society towards it. This declaration certainly had the reflection of the work of polish physician Janusz Korczack who was titled as the 'Father of Children's Rights'. With this declaration every man and woman agreed to give children the best without any discrimination on the basis of their nationality, race or creed. The five measures incorporated were:

1. "The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;
3. The child must be first to receive relief in times of distress;
4. The child must be put in position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men."

The destructive Second World War lead to thousands of causalities which included children also andbenched itself as a twisting turn in the history of children's rights. As a consequence of this, on the ashes of the League of Nations the new and the biggest international organisation the United Nations was formed, which funded and created the Urgency For The Children in 1947 that came out as UNICEF and itsmain focus was specifically helping the tender victims of the 2nd world war. A year later, in 1948 the Universal Declaration of Human Rights (UDHR) by UN dated 10th December was adopted for the protection of rights of every human on this earth which also acknowledged that the two sensitive races of this globe "Motherhood and Childhood are entitled to special care and assistance." A few years later, the UNICEF was entitled as a permanent instrument of UN in 1953, which broadened its scope and supported in expansion of developing countries. It

CC BY-NC 4.0

conducts various programs in order to help children with their education, health and access to food and water.

Few years later, the General Assembly of the UN in 1959 adopted the Declaration of the Rights of the Child, which described ten principles that identified the child as a subject of rights. Those 10 basic principles are:

1. Every child, of whatever origin, shall be entitled to the rights provided under this convention without any differentiation.
2. Every child should be given special care and protection so that he could flourish in all aspects of life.
3. Every infant has right to self-identity and citizenship.
4. The child should be provided with social security and protection for him and his mother before and after birth.
5. A disabled child should be given special care and attention.
6. The child shall be loved and understood for his harmonious development under the responsibilities of his. An infant must not be separated from his mother. An orphan must be taken care of by the public authorities.
7. The child shall receive elementary education to recognise his abilities and has right to recreate.
8. The protection of the child is the top most priority in the society.
9. The child must be protected from any type of abuse. He shall not be forced to engage in any type of occupation before a minimum age which leads to an adverse effect on his education, mental and physical development.
10. He shall be brought up in an amicable environment so that he could further use his capabilities for a good cause.

Till now not many countries have signed this text, which has left this declaration only with its evidential value that macadamized the way to a Universal Declaration of Children Rights. To make the Universal Declaration of Human Rightsmore effective the UN recommended for a charter that would bound the countries to follow it. For this purpose the UN set up a commission on Human Rights. Two parallel documents to the Universal Declaration of Human Rights were adopted by the General Assembly of UN in between the Cold War after much debate. They are:

- The international charter for Economic, Social and Cultural rights

CC BY-NC 4.0

- The charter related to Civil Rights.

The General Assembly of the UN decided on 21st December, 1976 to announce the year 1979 as the 'International Year of the Child' as it was the twentieth anniversary of the convention of 1959. Here it was observed that it would furnish certain codified provisions in reference to the litigation of matters relating to children. It would create awareness for the personal and legal authorities. It would also recommend that the programmes of children must be the core part of the developments plans at economic and social levels with a view to achieve comforts for children at national and international level.

After a decade, in the year 1989 the UN General Assembly again adopted the Convention on The Rights of a Child (CRC) dated 20th November and had also carefully watched its enforcement since the year 1991. This convention is the enhanced concept of standards of Human Rights in context to a 'Child'. The state parties in this convention recollected that the UN has served that Childhood should be protected and it deserves special care and attention under the UDHR. It has recognized that the child should live in a friendly and lovable environment where the family supports him and such environment is good for his balanced development. The child should be prepared to live in the society as an 'Individual' andmust play his part in the society. In the UN Charter it was affirmed that in some countries, children are forced to live in strenuous situations and thus they need exclusive help. For reforming the living conditions harmonious development and protection of the child there is a need for International Co-operation among different nations. This convention consists of 54 articles that deal with child and rights concerned.

Article1- states the definition of a child which means every human being who is less in age of 18 years as the subject to the laws of the nation or where majority s attained earlier.

Kinds of rights provided to Children:

1. Civil rights and liberties include:
    - As every human being, every child has implicit right to live and the state parties must work for the child's development. (Article 6)
    - Every child has the right of getting himself a name, being registered immediately after his birth to got himself identified, attain nationality of his nation and also his parents must take good care of him. (Article 7)
    - The right to freedom of expression and to seek or impart knowledge is provided to every child of the world. But this right is provided with some restrictions also.(Article 13)

- Every child has the right to manifest, propagate or profess religion of his or her choice, they have right to think and freedom of conscience unless restricted by law.(Article 14)
- As every other person, children have right to form associations and gather in peaceful conditions or situations without disturbing Public Peace.(Article 15)
- There shall be no unlawful interference with the Privacy of a child or encounter his or her reputation.(Article 16)
- Right to appreciate one's culture and practice their own language.(Article 30)
- Right to be protected from inhumanity, barbarity and ill-treatment including punishment such as Death Penalty or Imprisonment for Life.(Article 37)

2. Right to Family Environment includes:
    - Every child has the right to live happily with his parents and cannot be severed from them, that to be against his or her consent, unless according to a decent authority such dissociation is for the benefit of the child. (Article 9)
    - Children should be nurtured and brought up in a manner essential for their growth and development.(Article 18)
    - This convention allows for the adoption of the child where his or her rights must be secured. (Article 21)
    - Children shall not be unlawfully deported to abroad and shall be prevented from being a victim of Child Abuse.(Article 19)

3. Right to Health includes:
    - Right to survive and live in a healthy manner.(Article 6)
    - Even a physically or mentally retarted child shall have the right to live a decent life with dignity.(Article 23)
    - Every child shall have the right to live in the most healthy manner and shall be provided with facilities for the treatment of sickness.(Article 24)
    - Right to be secured socially and served with child care services.(Article 18)
    - Right to live a normal life sufficient for his overall progress.(Article 27)

4. Educational Rights includes:
    - Every child shall be educated at primary level free of cost and encouraged to attain secondary and higher education.(Article 28)

CC BY-NC 4.0

- Every child has right to enjoy and participate in leisurely activities and take interest in cultural life and actions.(Article 31)

5. Right to special protection in emergency includes:
    - No child shall be a part of armed forces and hostilities unless he attains the age of 15 years. The children who are the sufferers of war shall be provided with palliative care.(Article 38)

6. Right of Child in relation to administration of justice
    - While carrying out the proceedings for juvenile justice the age of the child shall be taken into account with the aim of re-establishing his reputation in the society, promotion of his dignity and respect of the human rights of a child. A child kept under detention shall be treated with humankind and allowed to meet his family. A child under detention shall be parted from adults unless it is beneficial for the child to live with them. A juvenile shall not be punished with Capital Punishment or Life Imprisonment. The arrest, detainment or remand must be done in affirmation with the legislation for the shortest span of time and used only when it is the last expedient left.(Article 37)

7. Right against exploitation includes:
    - Every child has a right entitled to him to protect him from any kind of economic exploitation which includes activities which are hazardous in nature and negatively affects the physical or mental health, spiritual or moral ethics and is an obstacle between his education and social growth. The state must also set a minimum age for recruitment of a child to employment, where there must be proper and regulating conditions of employment.
    - The child must be protected from being victimised under the adulterous production in the black market and they are also empowered to be safeguarded from the usage of narcotics or psychotropic substances.(Article 33)
    - A child needs to be protected from being a part of illicit racket of prostitution and child pornography. The child has the right to be prevented from any type of sexual abuse or exploitation.(Article 34)

CC BY-NC 4.0

- The child is entitled to be prevented from any kind of abduction or trafficking, where there must be relevant provisions made by the state at national level by all means.(Article 35)
- The state shall refrain the child from being exploited, nocuous to the welfare of the tender one.(Article 36)

Implementation of the convention - For scrutinizing the improvement of the approaches and the liabilities imposed upon the state parties in the light of the accomplishment of the goals of the aforesaid convention, a committee composed of 18 members was established(Article 43). Here the state parties must submit a report to this committee regarding the above matter (Article 44).

Appreciation and Shortcomings of the convention- The aforesaid convention was a milestone in itself but the major issue of the convention was with the implementing mechanisms of the convention. The convention was enthusiastic enough with absence of rigidity. There were three techniques proposed for the accomplishment of the above approaches but only one that is that is the reporting procedure was adopted, which led to the fall of the convention. Thus it was advised that the state parties must work out the other techniques too for hardening the convention and its jurisdiction.

Apart from this landmark convention in favour of the child, there have been other conventions too:

- Optional Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflicts, 2000
- Optional Protocol to the Convention on the Rights of Child on the Sale of Children, Child Prostitution and Child Pornography, 2000
- Worst forms of Child Labour Convention, 1999
- European Convention on the Exercise of Children's Right, 1996
- European Convention on Contact Concerning Children, 2003
- European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007
- African Charter on Rights and Welfare of the Child, 1990

CONCLUSION

Although there has been a noticeable progress, still there are countries who have not yet signed the convention; there are countries that still do not recognize the rights of a child. Through this, many children are deprived of their human rights and are also victims of underdevelopment. According to

CC BY-NC 4.0

the analysis report passed in 2017, it has been evident that there has been a continuous decrement in the percentage of the children involved in Child labour but according to the last figures estimated, 1.2 million children are being trapped under other derogatory sexual activities like ChildProstitution.Other than this 12000- 50000 children, specially girls have been yearly abducted and sent into different countries for sex trade; in which 5000- 7000 Nepalese are send across the Indian borders and over 10000girls are sent in Thailand. Also 1000-1500 Guatemalan babies are trapped through adoptions by foreign couples in Europe. Since the year 2001, the Interpol have identified nearly 7800 children being involved in Child Pornography.Also according to the new stats there were 6245 incidents last year and 4380 in 2015, been recorded by different agencies of Canada under Child Pornography. The legal authorities at both the national and international level have been failed in minimising the issue of Child Sexual Abuse.

Beside the mentioned conventions, there are many other NGOs working for the same and have helped in enlighting up the lives of many vulnerable children. UNICEF also encourages the International Network for Girls, comprising 400 NGOs that work in 86 countries to protect the girls.

Yes, it is acknowledged that a large number of children are away from justice but many are saved from the dirty slush of Child Abuse.

Thus to conclude, for an efficacious implementation of the laws and rules made in the interest of child, there should be proper machinery working at different levels. Families should be educated enough to protect their child from any type of ill-treatment. Countries and International Organization should co-operate for this purpose.

CC BY-NC 4.0