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History and Evolution of Child Rights in India

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This article aims to aid me in providing the reader with a better understanding of the history and evolution of Child Rights in India. Within this article, we will be talking about the understanding of Children and Child Rights. We will go through the various periods of the history of India, talking about the state of Child Rights in those periods and how the former lead to the later periods, and the difference between them. While talking about the history of Child Rights we will focus more on the events that happened and the provisions which were passed in order to introduce reforms in the field of Child Rights in India. We will also discuss in brief, the world history of Child Rights and the early conceptualisation of Child Rights in the world. This will serve as a backdrop to which we will continue to study the history of Child Rights in different periods of India. The discussion on the evolution of Child Rights will focus more on the changes that were brought during the periods, what led to those changes, and their final impact on the Child Rights scenario in India. This discussion will also acknowledge the shift of the policymakers from different periods onto the different fields of Child Rights that are to be provided to the children.

Keywords: *child, rights, history, evolution.*

INTRODUCTION

India houses a population of 1.21 billion as per the census of 2011, 41.1 percent of which lies below the age of 18. This number amounts to a little less than 500 million. With such a large majority of the population being underage, we are bound to have certain provisions to keep

them protected. However, India still ranks at 113th among 182 countries in the Child Rights Index 2020 with a score of 0.669. This shows that there lies a huge room for improvement for India to improve the lives of its child population.

Considering the world, India is a fairly new country as compared to its colonists and other European countries. Keeping this in mind, India has come fairly far from children under the age group of 7-12 working 9 hours a day as the Indian Factory Act of 1881¹ to completely prohibiting employment of a child under 14 years of age as domestic help and in any factory, mine or any other hazardous place² and even making their education mandatory³. France which is currently ranked 9th on the Child rights Index 2020 with a score of 0.891 was established in 1190 and one of the first ideas of child rights in the world emerged in France in 1841. The interval of time between these two events was 651 years. It took, a nation as developed and established as France, 651 years to even come up with the idea of child rights. India has managed to trail France by just a difference of 0.222, and all this in the 73 years of its independence.

This shows how far India has come in protecting its young ones and how far it can still go to do so. Thus, Child Rights in India is most definitely not in a completely ideal state, but it certainly is in a stable and rapidly improving one. We shall see more on how India managed to reach this state and how further it can go ahead in this article.

UNDERSTANDING A CHILD AND CHILD RIGHTS

1. What is a Child?

Asking someone “what is a child?” is a very strange thing to do as it may seem something too obvious. Perhaps you can define it as “someone who is not an adult” or “a young person especially between infancy and puberty” or even “young individuals who have yet to develop a sense between wrong and right”. But to form legal reforms for a “Child”, we first need to understand what comes under the precedent of the word “Child” or to put it simply, a legal

¹ Bipan Chandra, *History of Modern India* (Orient BlackSwan Pvt Ltd)

² Child and Adolescent Labour (Prohibition and Regulation) Act 1986

³ Right of Children to Free and Compulsory Education Act 2009

definition of the word “Child”. Although the Constitution of India does not provide for a legal definition of “Child”, there are numerous provisions under which the word “Child” has been defined in order to meet the purpose. For example, the Indian Contracts Act of 1872 defines it as “one who has not completed his or her 18 years of age”⁴ whereas the CLPR Act defines it as “someone below 14 years of age” and the Juvenile Justice (Care and Protection Act) 2000 defines a juvenile as “someone who has not completed 18 years of age”⁵. Again, other provisions in our nation define what a child, minor, and other similar distribution of children mean. Why is it so that there exists so many different the word “Child” exists, perhaps it is because of perspective, or perhaps the difference in understanding or even perhaps different needs? Also, the fact that there exist so many different interpretations of “Child” brings us back to the former issue that who are the “Child Rights” for.

Considering that humans evolved 4 million years ago⁶, and society around 5000 years ago, the issue in the discrepancy in the definition of what a “Child” is, was solved fairly recently, around 32 years ago (from the writing of this paper) in 1989 by the United Nations Convention on the Rights of the Child which is also, till date, the most widely ratified treaty in the human history⁷.

2. Child Rights: Definition and Conception

On the surface, Child Rights is the simple amalgamation of the two words “Child” and “Rights”. However, it goes way deeper than that. Child rights are human rights tailored especially for children in order to ensure special care and security and to cover their necessary basic needs. These include mandating food and education, prohibition of child labour, criminal laws for offences against children, protection from abuse, and much more to ensure the appropriate advancement and development of both the body and the mind of the Child⁸.

⁴ Indian Contracts Act 1872

⁵ Juvenile Justice (Care and Protection) Act 2000

⁶ John Noble Wilford, ‘When Humans became Humans’ (*New York Times*, 26 February 2002) <<https://www.nytimes.com/2002/02/26/science/when-humans-became-human.html>> accessed 01 March 2021

⁷ United Nations Convention on the Rights of the Child (Adopted on 20 November 1990)

⁸ Rama Kant Rai, ‘History of child rights and child labour’ (*menengage.org*) <<http://menengage.org/wp-content/uploads/2014/06/History-of-child-rights-and-child-labour.pdf>> accessed 01 March 2021

In the very early days, back in the ancient world when Balkan states and the Mediterranean States held great power, and which have greatly influenced the modern-day western world, Children were perceived as devices of income or by-product of bodily desires rather than an entity with a lively existence of their own. This led to the depiction of children as primarily mythological. It was only up until the mid-sixth century that everyday depiction of childhood activities started appearing in art and literature, however even still children were simply depicted as small adults⁹. Such depiction leads to the understanding of children being property or possible labor. Parts of Ancient Greeks and Romans even went as far as leaving girl children and children born with disabilities in the wild or hillsides. Although the killing of unwanted children across the world has surely become far less common but is surely still present in the modern world, perhaps closer to you than you might imagine. Last year, the UN reported that India accounts for 45.8 million of the world's 142.6 million missing females¹⁰ over 50 years. Philippe Aries, a French historian who wrote a lot about daily lifestyle in the early 1900s once wrote on the issue of childhood that, "the idea of childhood did not exist at all in earlier times, as once the 'child' moved from the biological dependence of 'infancy' it 'belonged to adult society'"¹¹.

The conceptualisation of Child Rights thus became very important to introduce reforms for the better life of the little children.

HISTORY OF CHILD RIGHTS

1. World History of Child Rights

Perhaps the first legislation or a proper provision to be passed by a nation's government on the issue of absence of Child Rights was in France around the 1840s when laws concerning the

⁹ John H. Oakley, 'Children in Archaic and Classical Greek Art: A Survey' (*Oxford hand book*, December 2013) <<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199781546.001.0001/oxfordhb-9780199781546-e-007>> accessed on 01 March 2021

¹⁰ 'Vanishing act: Population and female infanticide' (*telegraphindia.com*) <<https://www.telegraphindia.com/topic/un>> accessed 1 March 2021

¹¹ Philippe Aries, 'Centuries of Childhood' (*monoskop.org*) <https://monoskop.org/images/d/d0/Ari%C3%A8s_Philippe_Centuries_of_Childhood_A_Social_History_of_Family_Life_1962.pdf> accessed on 01 March 2021

security of children were conceptualised. After the American and the French Revolution had nothing significant to support the children of the time works like “Oliver Twist” by Charles Dickens begin catching air highlighting the plight of the children in those ages, it became important for the people to pay attention to this issue.

However, it was not until after the First World War that the globe began realising the need for Child Rights. It's almost funny how it took the world one of the most tragic events in its history to realise that kids, the most vulnerable of all humans required some basic rights in order to secure their future.

Not to mention this was also the period when the world saw a surge of scientific developments. Perhaps it was too an important factor in making the world realising what it had been lacking. With developments and science, the society made great advancements too, new ideas and machinations from the industrial revolution made it possible for a proper and fast transformation of the society into a modern era, where along with the children of the upper section, the children of the working class too could enjoy a proper childhood away from the harsh work up to some extent. Up to some extent because they were still engaged extensively in child labour activities because their small fragile bodies allowed them to get into tight spaces.

After the First World War, the Geneva Convention gave the world the International Save the Children Union which released the Declaration of the Rights of the Child which was adopted by the League of Nations in the Geneva Declaration which became the first global treaty on Child Rights. The Declaration stated, “humanity owes to the Child the best that it has to give”¹². This was a historic moment as for the first time in the history of mankind, humanity as a whole acknowledged existence of rights for children and their responsibility towards them.

After the Second World War when the League of Nations failed, came the United Nations (UN) which continued the pursuit of proper treatment and security of children. The UN

¹² Geneva Declaration of the Rights of the Child, 1924 (adopted on 20 November 1959)

established the United Nations International Children's Fund (UNICEF) and then the general assembly adopted the United Nations Convention on the Rights of the Child (UNCRC).

The UNCRC provides for the General and Political Rights of Children under 18 across the globe. To this date, UNCRC is the most ratified treaty ever with 196 of the 197 countries to have signed it.

2. Indian History of Child Rights

Evidently from the Ancient texts we have around, like the Manusmriti¹³ or Mahabharat¹⁴ or the Vedas, it is clear that laws revolving around Children have existed in this country for quite some time. However, these laws existed more as "on children" rather than "for children". There existed laws that bound children to a pre-determined fate based on the family or stars under which they were born. Children were even considered to be "owned" by their fathers. They were forced to believe that their life at present is bound by the inevitable karma they harvested in their previous lives.

Some form of reforms existed back then as well, like King Vikramaditya's implementation of moral ethics because of which being obedient to elders became the approved and valued form of behaviour instead of the unquestionable duty it was before. However, these reforms couldn't save the exploitation of the natives and the children from the upcoming invasions by the Arabs, Turks, and Mughals. These plunderings caused a major setback to both capital and culture, both resulting in the downfall of elementary education to children and indulging in labour at a young age. Before this elementary education was given only to the higher castes, as the Mughal rule settled in, this changed to providing education to only the rich aristocrats and royals. In both, the given periods' Girls were rarely given any education and they were still considered to be inferior to boys. Not was done to help the children during this period in the history of India.

¹³ Ganganatha Jha, 'Manusmriti with the Commentary of Medhatithi' (*wisdomlib* 1920)

<<https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi>> accessed 02 March 2021

¹⁴ 'Mahabharata Through the Eyes of Indian Laws' (*Lawbhoomi.com* 18 June 2020)

<<https://lawbhoomi.com/mahabharata-through-the-eyes-of-indian-laws/>> accessed 02 March 2021

After the Mughals, came the British, they stormed in, divided the nation, and took control of everything they could. The British brought about both reforms and damages. They did introduce provisions to abolish the Slavery system and Child Marriage, implementation of which was certainly not perfect at all. Macaulay and Bentick helped in reshaping the education system to a more logical and scientific form, although this still was not done for the betterment of children but for convenience in administration as Macaulay stated, *“In India, English is the language spoken by the ruling class. Those Indians of the high class who are in government also speak it... We must do our best to form a class who may be interpreters between us and the millions whom we govern. A class of persons Indian in blood and colour, but English in taste, in opinions, words, and intellect”*.

They helped in the modernization of the Indian society but through Christian Missionaries. They abolished female infanticide as well, however still considered an Indian child inferior to a British. Thus, the British did bring about some reforms, but they weren't because they care for the future of the kids in India, rather each reform they brought had an ulterior motive behind them. These didn't go unnoticed by leaders like Raja Ram Mohan Roy who is perhaps the greatest social reformer the country had ever seen.

Raja Ram Mohan Roy felt the need to hold people by their shoulders and raise them from their backwardness in order to make India a better place for them to live. He found The Brahma Samaj, aided in the abolishment of Sati in 1829¹⁵, fought for the liberty of Womankind and freedom of a girl child. He opposed the caste system and helped in the delivery of education to every child. The contribution of Raja Ram Mohan Roy towards child reforms and social reforms was so great that he was also considered to be the Maker of Modern India.

Then came the time of Indian Independence. Now a lot of things changed when India became independent, one of them being that the Nation could now freely focus to develop on its own. Independence and democracy granted India the power to bring about reforms without the need for revolution.

¹⁵ 'Raja Ram Mohan Roy' (*britannica.com*) <<https://www.britannica.com/biography/Ram-Mohan-Roy>> accessed 03 March 2021

Post-Independence, the framers of the constitution were well informed about the absolute need for the introduction of Child Rights in India in order to ensure a better future for not only the Children but the country itself. The constitution provided for a lot of reforms for Children, some exclusively for them and some for the general public including them. The most notable of them all being the Fundamental Rights which provided for basic rights to all citizens and some especially for children:

- Article 15(3) - *“Nothing in this article shall prevent the State from making any special provision for women and children.”*
- Article 21 - *“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”*
- Article 21A - *“The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”* (This article was not added up until 2010, by the 86th amendment)
- Article 23(1) - *“Traffic in human beings and the beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”*
- 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

Many other statutory reforms were introduced after independence as well, like Apprentices Act 1961, The Child Labour (Prohibition And Regulation) Act 1986, The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply, and Distribution) Act 1992, The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994, The Juvenile Justice (Care and Protection of Children) Act 2000, National Policy for Children 1974, National Policy on Education 1986, National Policy on Child Labour 1987 and many more¹⁷.

¹⁶ Constitution of India

¹⁷ Mayukh Gupta, 'The Rights of Children In India' (*Legalservice India*)

<<http://www.legalservicesindia.com/article/219/The-Rights-Of-Children-in-India.html>> accessed 03 March 2021

Since Independence different governments have been trying to tackle the problems faced by the children under them in different ways. It was only after the struggle for independence began that leaders started to focus on the problems of the children on a nationwide scale, and were then able to introduce reforms either via revolution in the pre-independence period and then by legislations in the post-independence period. Thus, the independence struggle was not only the cause of the rise of nationality in the people of India but also the rise of understanding towards children.

EVOLUTION OF CHILD RIGHTS IN INDIA

The evolution of Child Rights did not happen evenly along the timeline. In the early stretches of the timeline, the progression of child Rights was perhaps none. It gained little momentum in the medieval ages, saw a significant number of changes in the Colonial period, and saw the largest development around and after Independence. A very obvious observation that could be drawn from this could be that the rate of conceptualisation of reforms was directly in proportion to the advancement and reach of education. Through each era different there existed different concerns about children which lay greatly in contrast. For example, the choice of identity was not even something that existed in ancient or medieval India but is a major concern today. We shall now see how each era was different from others and how it evolved and developed over time.

1. Child Rights in Ancient India

Ancient India was majorly a Patriarchal society where a child was perhaps born as something which was to be owned by his father. Perhaps the same can be said about the rest of the world as well. Lloyd de Mause, a well-known historian who left us only last year, once said “the further back in history one goes, the lower the level of child care, and the more likely children are to be killed, abandoned, beaten, terrorised, and sexually abused”¹⁸. This perhaps brings us back to what we already quoted from Phillipe Aries’s “*Centuries of Childhood*”, that as a child grew from infancy it now belonged to the “adult society”. Children were simply

¹⁸ Julius A.Elias, ‘*The History of Childhood*’ (muse.jhu.in 1976) <<https://muse.jhu.edu/article/247436/pdf>> accessed 03 March 2021

perceived as devices of income, either long term by the means of employment or instant by trafficking. Child Rights was a concept yet to be stumbled upon, thus the talks about its evolution are irrelevant.

Arguably though the life of some children was better than others in India, not because the community they lived in realised their needs but instead because the society perceived those children to be better than others simply because they were born in a societal construct where one human life was pitched to be higher than others on the basis of things like caste, race, religion, etc. So, children were simply stripped of their rights because they were born with the wrong blood.

2. Child Rights in Medieval India

Medieval India saw some reforms for the Children because of educated and understanding rulers. Rulers like Ashoka and Vikramaditya brought significant changes under their rule. They made education more feasible to the working class and a decrease in taxation allowed for some relaxation in the work done by children. The plight of the girl child however was still more or less the same even after the Kings called for better treatment of women but an uneducated and patriarchal subject stood in the way of this basic understanding. Of course, the system higher classes getting far more privileges than the majority of others was still prevalent

All of this progress however saw a huge setback in the form of foreign invasions and raids. These were harmful because not only they were large-scaled but also because of how frequently and in great numbers, they were taking place. India faced a large number of plunderers, from Arabs to Turks to Afghans to Mughals. This situation subsided when the Mughal rule was established. It took some time for people to get used to the new regime and also for the new Ruler to get used and recon the current scenario of their kingdom. India saw huge educational reforms under the well-educated and well perceived Akbar. Akbar treated all his subjects the same and opened numerous institutions of education for both Muslims and

Hindus in his regime. He also introduced curriculum changes to better suit the life instead of the religion of the children¹⁹.

But then again, this all went downhill when his great-grandson Aurangzeb came in power, whose policies were strictly against Hindus. He also believed education to be inspired more by religion, favourably Islam than practicality. Thus, even after making somewhat significant strides in child reforms, especially in education, everything got more or less levelled over time as rulers and ideologies changed. However, the perception of children by society did evolve as children were now seen as the future of what the society would be, and thus the need of preserving the seeds of the future society laid the foundation for the upcoming changes.

3. Child Rights in Colonial India

In Colonial India, a number of reforms got introduced primarily because of two reasons:

1. To make it convenient for the British to rule the country as safer and more educated children would provide security and quality in the required staff
2. To please the people and to ensure the prevention of revolts caused by the government ignoring the need of the people

The second cause was more because many prominent leaders actively stirred the public to understand how important the proper treatment of children is. The reforms introduced during this period were meant to be enjoyed by all children and were focused more on the proper development of the children's mind and body and their security.

Many inhumane practices like child marriage, child labor, trafficking, sati, child labour saw reforms in the form of The Guardian and Wards Act 1890²⁰ and The Child Marriage Restraint Act 1929. However, the leaders and the reformists played a much greater role in the formation and implementation of these acts than the government.

¹⁹ 'The Mughal Period' (*Britannica*) <<https://www.britannica.com/topic/education/The-Mughal-period>> accessed 03 March 2021

²⁰ Mitali Goyal, 'All about Guardianship and Wards Act 1890' (*latestlaws*, 08 October 2019) <<https://www.latestlaws.com/articles/all-about-guardianship-and-wards-act-1890-by-mitali-goyal/>> accessed 04 March 2021

Although reforms were being introduced for the children, the state of the Child Rights in India was such that the people had only begun to understand its significance with a few reformist leaders guiding them, while the Government's agenda behind the introduction of these reforms was simply ensuring ease and longevity of their rule.

4. Child Rights in India around and Post-Independence

Post-Independence India saw the most changes in the Child Rights scene. This was because the country was now free and the Government was of the people themselves. India now had an understanding of how children are the most valuable asset of this country, whose protection and security must be of utmost importance.

A number of reforms were introduced which focused on providing children proper life and opportunity and ample protection. Moreover, each of these reforms was meant to be enjoyed by every child equally. The reforms not only focused on the basic needs but also on the freedom of the child to choose his own life. We saw the Orphanages and Other Charitable Homes (Supervision and Control) Act 1960, Apprentices Act 1961, The Child Labour (Prohibition And Regulation) Act 1986, National Policy for Children, 1974, National Policy on Education, 1986, National Policy on Child Labour, 1987

Another major boost in the introduction of child reforms in India was because of the UNCRC which was adopted by the UN, of which India was a member in 1992. The UNCRC provided more guidelines for the nations to work on and to develop existing legislation. We then saw multiple new reforms such as The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply, and Distribution) Act 1992, The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994, The Juvenile Justice (Care and Protection of Children) Act 2000, Establishing of the National Commission for Protection of Child Rights in 2005, Right of Children to Free and Compulsory Education Act 2009, Protection of Children from Sexual Offences Act 2012 and many more.

The current state of Child Rights in India is not perfect neither the best, it is however developing, the recent decades have shown promising leaps in this issue and it is something

that is to be worked on to improve. The state of Child Rights has come a long way from Ancient India where children were born to be owned by society. However, in this new age, children require more reforms to shield them from already existing but recently recognised problems like gender identity, depression, anxiety, and much more.

CONCLUSION

India houses nearly 500 million children, accounting for nearly 41% of its population, nearly 30% of this number is below 6, and 73% of which live in rural areas. With such a demographic India was bound to suffer through shortcomings on its journey through the evolution of Child Rights. These shortcomings were all overtaken by the amassing and gaining of understanding of people.

Even though India is still pretty far away from offering its Children optimal rights and security and gaining a better understanding of issues, it is gaining on them fairly rapidly and the incorporation of young educated individuals in the country's governance and policymaking is quite the promise that we need. Nobody can understand the plight of the young ones than the Youth themselves as they themselves have just got past that period of their life and they know what they were lacking and are capable enough to understand what is necessary to be done.

Lastly, one important thing that we noticed while going through different periods of India and different stages of the evolution of child rights is that as the reforms in child rights advanced so did the active participation of people in making it conceptualise or perhaps could it be the other way around, that more the number of people actively participated in the conceptualisation of Child Rights, the more the scenario advanced.

The Ancient times saw only the Rulers making the decisions in all regards including Child Rights and thus the rights of the children were next to none in ancient times. The medieval times saw the Rulers take the advice of their council of ministers and their court which consisted of people of their kingdom and thus the state of Child Rights improved a little in the medieval period. As under the Colonial rule, the provisions were introduced by a government

consisting of multiple people and allowed for proper discussions and thus the Child Rights scene saw a major boost. Lastly in the present times, post-independence, democracy allowed for the participation of the common people in policymaking and this led to a huge improvement in the condition of Child Rights in India. Perhaps active participation by the masses is what we always needed and perhaps it is also the way ahead.