

Dynamics of Indian Legislation towards Child Health

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Abstract

The present article assesses the dynamics of Indian legislative system towards ensuring Right to health of children, since independence, through various legislative initiatives, making policies and launching programmes, so that a healthy, safe and secured environment can be build-up, which is required for physical, mental and psychological development of children. Although the term 'Child' is not specifically defined in the Indian Constitution and is depends upon the purpose and activity, but ensuring Right to Health, which is primary responsibility of every Government, for all children is always emphasized on priority. The legislative initiatives launched towards issues of health of children in different National Five-Year plans, since 1951, and different policies and programmes shows the priority and significance of the issues. It is evident from the discussion that the Indian legislature is serious regarding the health status of children.

Keywords: Constitution of India; Right to Health; National Five-Year Plans; National Policies.

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Introduction

The perception of the word 'Health' can be understood from the Preamble of the 1946 Constitution of the World Health Organization (WHO) that defines 'health' as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity". One of the important and indispensable objectives of any nation and its states in health development process is to provide its people such a level of health and its care related facilities so that they can participate fully and actively for the betterment of community. In this regards 'Right to health' in India has been regarded as one of the most contentious, highly argued and unsolved

problem (Mandal, 2009 [1]). In order to solve this unsolved problem since independence, the Constitution and Government of India have conferred many rights and legislation that are necessary for the betterment of health conditions of their citizens. The requirement and demand of health and its care of an individual depend upon various factors viz., age, gender, socio-economic or ethnic background etc. Therefore, to achieve the objective of providing a healthy and disease free life, maintaining that heterogeneity in demands, Indian Constitution has already discussed various provisions in relation to right to health that are classified based on these factors. Articles 38, 39 (e) & (f), 42, 47 and 48 A in Part IV of the Constitution of India which states about the obligations of State to ensure the establishment and the maintenance of healthy life of the individuals.

The Right to Health is a fundamental part of our Human Rights (Leary, 1994 [2] and Singh et.al, 2007 [3]) and it maintains the dignity and defines its significance in life. The Right to enjoyment of the highest attainable standard of physical and mental health, to give its full name, is not new. The Preamble of 1946 Constitution of WHO further states that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition." The impact of this definition can be visualized through the earlier discussions of WHO (1989) [4], Easley et al. (2001) [5], Economic U. N., & Council (2004) [6], MacNaughton and Hunt (2009) [7], and Hunt and MacNaughton [8] (2006).

The Universal Declaration of Human Rights (Assembly, 1948 [9]), also mentioned health as part of the Right to an adequate standard of living (Article 25) and is emphasized by Eide(2006) [10]. After that the Right to Health was recognized as a human right in the International Covenant on Economic, Social and Cultural Rights of 1966. Thereafter, the Right to Health and its related Articles is now referred as a part of international human rights. The Right to Health applies to all States (Kinney, 2001 [11]) In addition, States are committed to protect this Right through International Declarations, National Laws and Policies, and International Conferences.

It is the perception of most of the individuals that in recent years, Government is more concerned about the Rights that can improve the quality of health especially children, and this fact was also discussed by Marks (2002) [12]. The objective of the present study is to shed light on the dynamics of legislative initiatives towards ensuring Right to health of children since independence, so that healthy, safe and secured environment can be build-up and is required for physical, mental and psychological development of children.

The study begins by explaining that the Right to health in Section 2 and illustrating its implications and linkage with and other human rights. Section 3 highlights the concept of being a Child' in Indian legislations and entitlements which Government should ensure. Section 4 discussed about various legislative initiatives undertaken in different Five-Year plans, since 1950 to 2017, towards ensuring Right to health of children. Section 5 highlights some of the important national policies and programmes launched by the Government for addressing the issues of child survival, child development and child protection. Lastly, Section 6 gives a brief concluding remarks.

What is The Right to Health?

The main key aspects of the Right to health (Rioux, 2010 [13]), which emphasized its importance and significance, are highlighted below:

- The Right to health is an inclusive right. Mostly, the Right to health is often associated with accessibility to health services and availability of hospitals, by individuals, and is correct, but it goes beyond that. It includes a wide range of factors that can help to lead a healthy life. The Committee on Cultural Rights, is responsible for monitoring the International Covenant on Economic, Social and Cultural, and calls this organ as the "determinants of health." It monitors the issues
 - Safe drinking water and adequate sanitation;
 - Safe food;
 - Adequate nutrition and housing;
 - Healthy working and environmental conditions;
 - Health-related education and information;
 - Gender equality.
- The Right to freedom of health, includes the Right not to be subjected to non-consensual, such as medical research experiments and forced sterilization or medical treatment, and will be subjected to torture and other cruel, inhuman or degrading treatment.
- The Right to health contains entitlements, which includes:
 - The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;
 - The right to prevention, treatment and control of diseases;
 - Access to essential medicines;
 - Maternal, child and reproductive health;
 - Equal and timely access to basic health services;
 - The provision of health-related education and information;
 - Participation of the population in health-related decision making at the national and community levels.
- All services, goods and facilities must be available, accessible, acceptable and of good quality.
 - Operation of public health institutions and health, goods and services must be available in sufficient quantity in the state.

- Must be physically accessible as well as financially and on the basis of non-discrimination.
- Facilities, goods and services should also respect medical ethics and should be gender sensitive and culturally appropriate.
- Finally, they must be scientifically and medically appropriate and of good quality.

Linkage between the right to health and other human rights

Human Rights are interdependent, indivisible and interrelated with Rights to Health and can be visualized through the works of Venkatapuram et al (2010) [14][social and epidemiological aspects], Hendriks (1999) [15] and Hunt and Mesquita (2006) [16] [sexual and re-productive health related issues], MacNaughton and Hunt (2009) [17], and Hunt and Leader (2010) [18][defines highest attainable standard of health], Keener and Vasquez (2008) [19][Right to Life], Willis (1996) [20][economic development and environmental protection related], Gable and Gostin (2009) [21] [mental health] and Ooms (2008) [22] [health and its care]. This means that the violation of the right to health can often undermine the enjoyment of other human rights such as the right to education or work, and is vice versa. The emphasis on the “determinants of health”, i.e., factors and conditions that protect and promote the right to health beyond health services, and goods and facilities, shows that the right to health is dependent on, and contributes to the realization of many other human rights. These include rights to food, to water, adequate standard of living, to adequate housing, freedom from discrimination, privacy, access to information, participation and the right to benefit from scientific progress and its applications.

The discussion on the topic of health becomes very serious and vital when it is about health of a child. Since, today's children will be the future of tomorrow; therefore, it is responsibility of every individual and units of any system or organization to provide a healthy, disease free and peaceful environment for growth and development of children.

Children are regarded as the most vulnerable part of the population especially in developing countries like India (Tiwari (2004) [23] and Nayan(2015) [24]) in terms of their condition of health and availability of health care. According to the Williams (2008) [25], children need special care and facilities for their healthy survival and development. In addition of that the Rights to Health also discussed about the

responsibility of the countries regarding their children beyond their parents, to ensure that they get a healthy and normal life under all circumstances so that a bright future can be built-up.

Legal Definition of Child

The term ‘Child’ is not specifically defined in the Indian Constitution but it depends upon the purpose and activity. As per Article 1 of the United Nations Convention on the Rights of the Child (CRC) 1989, a ‘Child’ can be defined, which states that “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. This definition specially indicates an upper age limit for childhood, as 18 years. List of some of important acts declare different age criteria are given in 3.1.

To protect the child basic and necessary rights in terms of their health, Indian legislation has already specified a minimum age limit in accordance with their extent of involvement and the effect which may happen to them in that situation, so that they get a safe, healthy and happy childhood. One can emerge better survival and health status as a goal and a measure of progress for children. It is well known fact that an improved survival of children fundamentally depends upon their health status, lawfully (Pandey, 2014 [26]; Bajpai, 2006 [27]; Rai, 2008 [28]) and is generally ensured by providing a better care to their mother and accessibility of health services to them that can either governed through the Government or by the private organizations.

Different Acts declare different age criteria

- Indian Penal Code, 1860 in its Criminal law states ‘Nothing is an offence which is done by a child under age of 7 years. The age of criminal responsibility is raised to 12 years if the child is found to have not attained the ability to understand the nature and consequences of his/her act.’
- Indian Majority Act, 1875: Below 18 years for both boys and girls or 21 years if a guardian has been appointed by a court of wards [29].
- The Factories Act, 1948: A child below 14 years of age is not allowed to work in any factory. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor.’

The Plantation Labour Act, 1951: Less than 14

years [30]

- Merchant Shipping Act, 1951: Less than 15 years [31]
- The Apprentices Act, 1961: A person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age.
- Immoral Traffic Prevention Act, 1986: Less than 16 years [32], 'minor' 16 and above but less than 18 years [33]
- The Child Labour Prohibition and Regulation Act, 1986 'Child means a person who has not completed his fourteenth year of age.'
- The Juvenile Justice (Care and Protection of Children) Act, 2000, amended in 2006, 2010 declares "juvenile" or "child" means a person who has not completed eighteenth year of age.'
- Prohibition of Child Marriage Act, 2006 declares 'Child means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age'.

Need for a Uniform Definition of the Child

As mentioned above, the Constitution of India and the laws passed in recent years have unique and powerful to protect children's rights. However, there are laws under which the age of the child is not at par with the CRC, the government ratified the way back in 1992. In addition, the age of the child has been defined in various statutes. These specific age groups in different legislations as discussed in 3.1, not only create a dilemma, but also laid the foundations of injustice. Indeed, if the human being is a child or not depends on the law is invoked in a case. Moreover, when laws are in conflict with each other due to different definitions, it is naturally a difficult task to decide the "best interests of the child". It is therefore necessary that the definition of "child" be brought into conformity with the Convention, namely, "Under 18" by establishing a "coming of age" standard.

Accordingly, the Constitution of India, which came into force in January 1950, contains provisions for survival, development and protection of children. These include both in Part III and IV of the Constitution regarding the "Fundamental Rights" and "Directive Principles of State Policy". The distribution of powers between the Central and State Governments on different issues can be observed in the ninth Schedule of the Constitution of India and are in the form of Union List, State List and Concurrent List. The survival, development and protection of children fall on the Concurrent List.

The 73rd and 74th constitutional amendments have recognized a third level below the State Government, viz., 'Panchayati Raj Institutions (PRIS)', its financial and operational capacity given, and listed the subjects within its eld activities, some of which relate to the services that have a direct impact on children.

Developmental programmes in the country, including children, are made under the Five-Year Plans. Some of these programs are fully funded by the Central Government, some by both the Central government and the State Governments, and some entirely by the State Governments, depending on whether the programs are classified as Central, centrally sponsored or State sector schemes. In addition, a variety of programs are implemented in collaboration with international organizations and non-governmental organizations, which are now growing as a dynamic sector in the development and empowerment of children. In the following paragraphs, we will try to see now, the various measures in India taken by the Indian Government as a whole since its, independence with respect to survival, development, protection and participation of children both nationally and internationally.

Constitutional provisions for children in India

Several provisions of the Indian Constitution require the State which has the primary responsibility for ensuring that the needs of all children are met and their human rights are fully protected. Children enjoy the same rights as adults under Article 14 of the Constitution of India. Clause (3) Article 15 empowers the State to make special provisions for children also. Article 21A of the Constitution of India directs the State to provide free and compulsory education for all children in the ages of six to fourteen years so that the State that may determine by law. Article 23 prohibits human trafficking and forced labour. Article 24 prohibits employment of children in factories, etc., explicitly prevents children under fourteen years to be employed to work in any factory or mine or any other hazardous forms of work. Article 39 (f) provides provision for the State to direct its policy for securing children and provide the same opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and ensure the protection of children and youth from exploitation and moral and material abandonment. Article 45 of the Constitution provides that the State shall endeavor to provide early childhood care and education for all children up to the age of six years. Clause (k) of Article 51A requires that every parent or guardian, who is an Indian citizen, shall provide opportunities for the education to his child or ward

between the age of six and fourteen years. Article 243 G read with schedule-11 provides for institutionalizing child care to raise the level of nutrition and the standard of living, as well as to improve public health and monitor the development and well being of children in the Country.

Union laws guaranteeing Rights and entitlement to Children

A fairly complete legal system exists in India to protect the rights of children as covered in the Constitution. For the purposes of criminal responsibility, the age limit is 7 (not punishable) and over 7 years to 12 years punishable "if it is evident that the child understands the consequences of the act, as provided under Section 82 and Section 83 of the Indian Penal Code, 1860". For reasons of protection against abduction, kidnapping and related offences, which is 16 years for boys and 18 for girls ("as provided under Section 361 of the Indian Penal Code, 1860"). For special treatment under the Juvenile Justice (Care and Protection of Children) Act, age is 18 years for boys and girls. And the Protection of Women against Domestic Violence Act of 2005 defines a child as anyone under eighteen year, and includes a stepchild or foster family.

National Five-Year Plans in India

The Government of India through its Parliament and Schemes has taken the initiatives on the issue of health, specially for the children who are the future of the nation. The framers of the Indian Constitution enshrined the on subject of child health as a part of Directive Principles of State Policy (DPSP) provided under Part IV of the Constitution which serves the objective of "social justice" which has been incorporated in the 'Preamble' of the Constitution of India. Further, the Government of India from time to time through its Five- Year Plans has tried to achieve the goal of well-being of children by enacting plethora of legislations which directly or indirectly deals with the child health, which includes the Civil Rights Act, 1955 (during First Five Years Plan (1951-1956)).

The Suppression of Immoral Traffic in women and Girls Act (SITA), 1956; The Hindu Adoption and Maintenance Act, 1956; The Children's Institution (Licensing) Act, 1956; The Young Person (Harmful Publication) Act, 1956 and other enactments including the Children's Act, 1960 has taken place (during Second Five-Year Plan (1956-1961)).

During Third Five-Year Plan (1961-1966) Plan- a new department as 'Department of Social Security'

was established in June 1964 to deal with the problems and needs of children and later renamed as 'Department of Social Welfare' in January, 1966 and further Kothari Commission was constituted to look after the matter concerning the education of the children.

The Fourth Five-Year Plan (1969-1974) was dealt with the matter concerning the protection of children against child labour and to provide food, nutrition and health to children.

The Fifth Five-year plan (1974-1978) Plan was known for the initiatives taken regarding National Policy for Children, launching of Integrated Child Development Services (ICDS) Scheme and Angan Wade Centres (AWC), ratification of International Labour Organisation (ILO) by the Indian Government, initiatives for various immunization programmes and amendment of the Child Marriage Restraint Act and SITA followed by the enactment of the Bonded Labour (System) Abolition Act, 1976.

During Sixth Five-Year Plan (1980-1985), a Central Child Labour Advisory Board was constituted to review the implementation of existing child labour laws, followed by formulation of National Health Policy, 1983.

The Seventh Five-Year Plan (1985-1990) Plan provided the enhancement of child development services by establishment of Ministry of Women and Child Development and enactment of the Juvenile Justice Act, 1986 repealing the Children's Act, 1960 and followed by enactment the Child Labour (Prohibition and Regulation) Act, 1986. The National Child Labour Projects were launched having the objective to focus on disabled children. The SITA has been changed or repealed in 1986 to Immoral Traffic (Prevention) Act, 1986, e orts to reduce Infant Mortality Rate (IMR) and Maternal Mortality Rate (MMR). A National Education Policy was adopted in 1986.

The Eighth Five-Year Plan (1992-1997) included the child survival and development and in lieu of that the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was passed and National Nutrition Policy was adopted to combat mal-nutrition and Pulse Polio Immunization Programme was launched in 1995, followed by initiatives of two National Plans of Action in 1992 (one for Children and other for the Girl child) where Convention on the Rights of the Child (CRC) and Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) played a pivotal role.

The Ninth Five-Year Plan (1997-2002) focused on the development of children with respect to their

health, nutrition and education, Universal Immunization Programme was launched to fight from various diseases in children like diphtheria, pertussis, tuberculosis, polio etc. and the facilities for drinking water and sanitation facilities in each village. The Nutrition Policy, 1993 and National Plan of Action on Nutrition was launched with an objective to facilitate the 6 years old children and pregnant and lactating women were kept on priority. The National Policy on Education (NPE) revised in 1992 which results the launching of Sarva Siksha Abhiyan (SSA), Balika Samridhi Yojana (BSY). The introduction of 'National Commission for Children' to protect child rights was drafted in 2001.

The Tenth Five-Year Plan (2002-2007) was centralized on the 'survival, development and protection' of children, problem of declining sex ratio, female foeticide etc. and its legal enforcement. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 was amended. The Constitution of India incorporated with the 'Right to Education' as being the part of Fundamental Rights has been inserted through the Constitution (86th Amendment) Act, 2002 under Article 21-A and Clause (k) of Article 51-A which deals with the duties of the parents and guardians to provide educational opportunities for their children and wards. The Goa Children Act, 2003, The Commission on Child Rights Act, 2005 and the Juvenile Justice (Care and Protection) Amendment Act, 2005 were passed. Internationally the Government of India ratified the two Optional Protocols to the Convention relating to sale, prostitution, pornography of children and the children in armed conflicts.

The Eleventh Five-Year Plan (2007 - 2012) Plan is the era when the Hon'ble Supreme Court was active in defending and protecting the child rights by liberalizing the rule of Locus Standi in the concept of Social Action Litigation (SAL) in the name of Public Interest Litigation (PIL) through various judicial pronouncements through the judicial Activism.

In the draft of Twelfth Five-Year Plan (2012 - 2017), Planning Commission has also been active in defending the rights of children in terms of their health and education. Since, in India the some of the important health indicators which determines the health status of the country are not improving as fast as other socio-economic indicators. A good quality of healthcare, which is required for improving health status, is perceived to be either unavailable or unaffordable. Therefore, some of the important targets of the Twelfth Five Year Plan in health and education sectors, especially relating to women and children

are listed below.

Education

- Mean years of schooling to increase to 7 years.
- 20 Lakh seats for each age bracket in higher education. End gender gap and social gap in school enrolment.

Health

- Reduce: IMR to 25; MMR to 1. Increase Child Sex Ratio to 950.
- Reduce Total Fertility Rate to 2.1
- Reduce under nutrition of children in age group 0-3 to half of NFHS-3 levels.

National Policies and Programmes for Children

Further, the Government is implementing a number of child centric policies addressing the issues of Child Survival, Child Development and Child Protection. The important among them are,

1. National Policy for Children 1974 is the first policy document on the needs and the rights of children. It acknowledges children to be a very important asset of the country. The aim of the policy is to take the next step to ensure constitutional provisions for children and the Declaration of Human Rights are implemented. It describes the state of the services to ensure full development of a child before and after birth and throughout the life of a child growth for mental and physical well-being.
2. National Education Policy 1986 (NEP) is called "focus on the elimination of inequalities and equalize educational opportunities", especially for women, the Scheduled Castes (SCs), Scheduled Tribes (STs) and aboriginal communities. To achieve these objectives, the policy of scholarships call to expand adult education, hiring teachers, incentives for poor families to send their children to school regularly, the development of new institutions and the provision of housing and services. NEP called primary "child-centred approach" and launched the 'slate' to improve primary schools.
3. National Policy on Child Labour 1987: It contains a plan of action to combat the problem of child labour. It envisioned a legislative action plan centred and convergence of general development programmes to benefit children wherever possible, and the plan of action based on projects

for launching projects for the welfare of working children in areas of high concentration of child labour.

4. The National Nutrition Policy 1993: It has been introduced to combat the problem of sub-nutrition. Its aim is to solve this problem by using directly (long-term) Indirect (short term) and in the field of production and distribution of food, health and family welfare, education, rural development and the development of interventions, women and urban children, etc.
5. National Population Policy 2000: It aims to improve the situation of indigenous children. It insisted on free and compulsory schooling to 14 years, universal vaccination of children against all vaccine-preventable diseases, 100% registration of birth, death, marriage and pregnancy, reducing substantially the rate of infant mortality and maternal mortality, etc.
6. National Health Policy 2002: The main objective of this policy is to achieve an acceptable good health in the general population. The goal is to improve access to public health system decentralized by establishing new infrastructure in deficit areas and improve the infrastructure of existing institutions, essential to ensure more equitable access to health services throughout the geographical area of the importance of the country and given social.
7. National Charter for Children (NCC) 2003: It focuses on children's policies and the role of civil society, communities and families and obligations to meet the basic needs of children, especially for children from BPL families and street children through child care and education programmes for the prevention of exploitation. The Charter provides that the State and the community must take all possible measures to ensure and protect life, survival and freedom of all children. Education of adolescents, the Charter provides that the State and the community must take all measures for the education and skills of adolescents so that they can become economically productive citizens.
8. National Plan of Action for Children (NPA) 2005: NPA has a large number of leading sectors, including the protection of children such as the complete abolition of foeticide, female infanticide and child marriage and ensure the development of survival and protection of the girl, addressing and defend the rights of children in difficult circumstances to ensure that social and legal protection of all forms of abuse, exploitation and

neglect of all children.

In India, childhood has been defined in the context of legal and constitutional provisioning, mainly for aberrations of childhood. It is thus a variable concept to suit the purpose and rationale of childhood in differing circumstances. Essentially they differ in defining the upper age-limit of childhood. Biologically, childhood is the span of life from birth to adolescence. According to UNCRC (United Nation Convention on the Rights of the Child) [34], "A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier." The definition of the child as given by the UNCRC has definite bearing not only on child development programmes and on budgetary provisions for them, but also on production of statistics as applicable to different cross-sections of children in terms of reference ages.

Conclusion

It has been concluded from the above discussion that as per WHO, the term 'health' states, the 'physical, mental and social well-being' including free from diseases and with the same objective the Government of India has taken the initiatives for the health, food, survival, development of children by enacting plethora of legislations, schemes and policies and which leads to set-up the mechanism for its implementation also. When we go through the Policies and Programmes of the Government of India, it is found that not only the policies are there but the Government has also taken initiatives through implementation of Five Year Plans by enacting various statutes like the Civil Rights Act, 1955, the Suppression of Immoral Traffic in women and Girls Act (SITA), 1956; the Hindu Adoption and Maintenance Act, 1956; the Children's Institution (Licensing) Act, 1956; the Young Person (Harmful Publication) Act, 1956 etc., various Child Labour laws followed by the provisions under the Constitution of India in its various parts like Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties to provide the facilities for the protection of child rights including child right to health to achieve the goal of 'social justice' and 'Welfare State'. Not only the enacted legislations but the Judiciary has also played the pivotal role through its judicial pronouncements and judicial activism like initiatives to protect and prevent the child rights to 'health' and has liberally interpreted it in the light of 'Right to Life' enshrined under Article 21 of the Constitution of India, and

also by liberalizing the 'Rule of Locus Standi' which tends a public-spirited person, any Non-Governmental Organization, Advocated, friend or relative of victims can file a petition and through suo motu action by the Court under the framework of 'Public Interest Litigation (PIL)' through 'Writ Jurisdiction' of the Hon'ble Supreme Court and High Court under the provisions of Article 32 and Article 226 of the Constitution.

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29. Section 3
30. Section 2(a)
31. Section 109
32. Section 2(aa)
33. Section 2(a)
34. UNCRC (United Nation Convention on the Rights of the Child), adopted by the UN General Assembly in 1990, is the widely accepted UN instrument ratified by most of the developed as well as developing countries, including India. The convention provides standards to be adhered to by all State Parties in securing the best interest of the child and outlines the fundamental rights of children.