

**Dr. AMBEDKAR GOVERNMENT
LAW COLLEGE, PONDICHERRY.**



**SEMINAR ON HUMAN RIGHTS
WITH SPECIAL REFERENCE TO THE
RIGHTS OF WOMEN AND CHILDREN**

ON

6th & 7th MARCH, 2004

AT

PONDICHERRY

DR. AMBEDKAR GOVERNMENT LAW COLLEGE, PONDICHERRY.

Seminar on Human Rights (with Special reference to Rights of women and Children), held on 6th and 7th March, 2004.

LIST OF DELEGATES

1. Dr.Y.R. Haragopal Reddy, Dean, Faculty of Law, Nagarjuna University, Guntur, Andhra Pradesh.
2. Dr.K.P. Krishna Shetty, Advocate, Madras.
3. Dr.K.M.H. Royappa, Dean, Faculty of Law, Bangalore.
4. Dr.J.S. Patil, Dean, Faculty of Law, Gulbarga.
5. Dr.K.N. Chandrasekhara Pillai, Dean, Faculty of Law, Cochin.
6. Dr.K. Vikraman Nair, Director, SILT, Kottayam.
7. Dr.E. Vijayakumar, Dean, Faculty of Law, Krishna Devaraya University, Ananthapur, Andhra Pradesh.
8. Dr.(Mrs.) V. Hemalatha Devi, Dean, Faculty of Law, Tirupathi.
9. Dr.N.K. Jayakumar, Dean, Faculty of Law, Trivandrum.
10. Dr.C. Rajasekhar, Dean, Faculty of Law, Karnatak University, Dharwad.
11. Prof.V.C. Mathpati, Principal, Siddartha Law College, Gulbarga.
12. Prof. R. Harish, Principal, B.M.S. Law College, Bangalore.
13. Dr.G.P. Godhana Gandhi, Principal, Govt. Law College, Coimbatore.
14. Dr.R. Venkatrao, Principal, University Law College, Vishakapattinam.
15. Mrs. Premalatha, Lecturer in Law, Bangalore.
16. Mrs. Ashvini, E. Lecturer in Law, Bangalore.
17. Ms. Sheeba Simon, Research scholar, Madras.
18. Dr.N.S. Soman, Lecturer in Law, Cochin.
19. Mr.R. Ramasubramanian, Research scholar, Pondicherry University.
20. Prof.N. Manohar, Head of Dept. of Legal Studies, Madras.
21. Dr. David Ambroise, Sr.Lecturer, Madras University.
22. Dr.T.S.N. Sastry, Reader, S.I.S., Pondicherry University.
23. Dr.B. Krishnamurthy, Reader, S.I.S. Pondicherry University.
24. Mr. Cyril Vincent, Advocate, Pondicherry.
25. Mr.T. Tirunaveuccarrosou, Advocate, Pondicherry.
26. Mr. Mohan Keerthi Kumar, Advocate, Pondicherry.
27. Dr.S.G. Bhat, Principal, Govt. Law College, Pondicherry.
28. Dr.M. Gangadevi, Lecturer, G.L.C. Pondicherry.
29. Dr.(Mrs.) Vany Adithan, -do-
30. Dr.L. Solomon Raja, -do-
31. Mrs.K. Vijayalakshmi, -do-
32. Mr. Vincent Arputham, -do-

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NATIONAL HUMAN RIGHTS COMMISSION AND THE RIGHTS OF CHILDREN

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Introduction

“To look into some aspects of the future, we do not need projections by super computers. Much of the next millennium can be seen in how we care for our children today. Tomorrow’s world may be influenced by science and technology, but more than any thing, it is already taking shape in the bodies and minds of our Children”

--Kofi.A.Annan*

The above statement of the Secretary-General of the United Nations explicitly specifies the duty of mankind in discharging their responsibility towards the promotion and protection of the rights of the children in their future well-being. Children being individuals, they have equal status with adults as members of the society. They are not the property of parents, products of the States. And, they are people in the making. Being subjects of civil society, the family and the State have moral, ethical and legal obligations to recognize the rights of children on par with that of individuals of society at all levels without any discrimination.

In spite of the onerous responsibility lies on the shoulders of the national and international community, it took a long time for the world to recognize the human rights of children. With the adoption of the Declaration of the Rights of Child by the League of Nations in 1924, the modern civilized world for the first time recognized explicitly that children too have rights. After the adoption of the Declaration, it took a long time to convert the Declaration into a legal instrument, in spite of various efforts taken by the United Nations. The continuous sustainable efforts of the United Nations have finally culminated the adoption of the

Convention on the Rights of the Child on 20 November, 1989 which came into force in less than a year (i.e.) in September 1990.

India being a signatory to the Convention and also to discharge its constitutional obligations adopted a National Policy of Children in 1974 and constituted a National Children's Welfare Board.¹ Apart from these few steps, it has constituted a National Human Rights Commission (hereafter referred to as the Commission) in 1993 through the Human Rights Act in order to augment the human rights of all sections of the Indian Polity including that of children. Further, the Union of India and its units (the States) have introduced various schemes, enacted a good number of legislations for the promotion of the rights children. In spite of all the efforts and steps taken by the Union and the States, children are still considered as a commodity by many in the society including that of a family and are abused in many ways and means. At this juncture in order to halt the exploitation of children, the Commission has taken substantial interest in the promotion and protection of the rights of children in the last one decade since its inception. In this regard, this paper makes a modest attempt to analyze the role played by it in the advancement of the rights of children of India in various fields.

Child Labour

Child Labour is one of the major area where in the young children are exploited in spite of various enactments and schemes launched by the Union and its Units to realize the goals of the constitution. The Union of India constituted a National Authority for the elimination of child labour and adopted a Child Labour Project, which is being undertaken in twelve different states with an aim to end child labour by the year 2000. But in spite of the sustained efforts of the Government, there are more than 50 million children are still working in various industrial avocations. Taking into consideration the gravity of the problem, the Commission has undertaken various steps to this end in order to eliminate the problem all together.

M.C.Mehta's case. It also appointed a Special Rapporteur to monitor the action plan.

Due to the sustained efforts of the Commission during 2000-01, a large number of ^{children} working in various industries in the state of Uttar Pradesh were traced and it also created a Child Labor Rehabilitation and Welfare fund with a grant of 100 lakhs. The government of UP further established a good number of schools under the National Child Labour Project of the Union of India and nearly 20,000 children have been benefited by the educational scheme.⁷

Apart from the Special Rapporteur appointed in UP the Commission carried out an overall preview of the situation directly under the supervision of its member, Justice K.Ramasamy in other states especially Rajasthan, Orissa and Maharashtra⁸. The review was based on the guidelines laid down by the Supreme Court of India in *M.C. Mehta's* case. The Commission in its review found that the steps taken by both the Union and State governments and Union territories is far from satisfactory and urged them again to give greater care in implementing the directions of the Apex court.

Abolition of Employment of Children by Government Servants:

Since February 1997, the Commission also started pursuing the issue on the employment of children as Domestic labour by the government servants including the officers of the Civil Service. The relentless efforts of the Commission finally led the government of India to insert a new clause in the Central Civil Services (Conduct) Rules, 1964, in 1999, and All India Services (Conduct) Rules, 1968, in 2000.

Accordingly if any government servant employs a child below the age of 14 it will automatically constitute a misconduct of service rules and attracts a severe penalty. On the similar lines of the approach of the Union, some States also amended their service rules and some are still in the process of considering the

In the initial periods the Commission had focused on the issues of child labour in a general sense. In the later periods it has recommended to the government on the need for amending the constitution for the provision of free and compulsory primary education up to the age of 14 years². It also requested the Union of India to amend and strictly enforce the Child Labor (Prohibition and Regulation) Act 1986, in order to punish the guilty by enhancing the existing simple punishments and to halt the lamentable fewer convictions. Apart from recommending to the government in order to achieve the objective of Article 45 of the constitution the commission has chosen a novel way to address the problem. The Commission under the then Chairman Justice Ranganath Mishra requested them to take legislative, administrative and other measures to achieve the goal of 'Universalization of Elementary Education'³. Apart from the recommendations, the Commission constituted an expert committee to monitor the efforts of the Ferozabad District administration in ending child labor in glass industry.

The views expressed by the Commission received the support of apex court in its path breaking judgments in *Unnikrishnan V. State of Andhra Pradesh*⁴ and *M.C.Mehta V. State of Tamil Nadu*⁵. Taking note of the support expressed by the Supreme Court, the Commission recommended to the United Front Government during 1996-97 to enact a legislation to make free education compulsory. The Commission further requested the Ministry of Personal, Public Grievances and Pensions to take appropriate steps to amend the Government Service Conduct rules, 1964 to end Child Labour in the domestic front and also addressed letters to all the State governments and Union territories.⁶

In 1999 the commission launched a project entitled Child Labour Abolition Programmes (CLAP) in the State of Uttar Pradesh with the cooperation of the government of Uttar Pradesh to eradicate child labour in the carpet industry in the state as per the directions issued by the Supreme Court of India in

recommendations of the Commission.⁹ The Commission further intrudes wherever it is necessary to monitor the issue personally to what extent the Union and the States will actually take action against those employees who continue to persist in employing children as domestic servants.

Child Marriages:

The concept of child marriages is prevalent in India since ancient periods. The customary, religious, cultural, social and economic factors have laid the foundations for this inimical practice, which is in persistence even in the contemporary era in spite of Child Marriage Restraint Act 1929. Apart from these factors, several parents even today have a belief that children are their own property and can be used the way as they like. Further, in view of the high rate of poverty and various other socio-economic factors have an enormous effect on several parents to absolve their responsibility from the social evil of dowry, especially in the case of girl child. Hence majority of parents especially in the rural sector prefer an early marriage to select a groom of their choice within their financial limits.

The bad effects associated with child marriages are many. Firstly, it constitutes as a violation of rights of the child, especially that of the girl child. Secondly, it has a tentamounting influence on the reproductive health of a girl child. Thirdly, both the girl and boy may be deprived of basic rights such as education, parental care, and exploitation from work so forth so on. Fourthly, in many cases a child marriage leads to a vicious circle of early pregnancy, malnutrition, maternal mortality and high infant mortality. Fifthly, there exist a great danger to commit female foeticide and infanticide due to economic and social conditions of the parents. Sixthly, at the national level, child marriage creates a longer legitimate reproductive life span and contributes to population explosion.

In view of the risks associated with child marriages and as forbidden by law, the commission in exercise of its powers under the Human Rights Act, initiated *suo motto* steps to eradicate the child marriages that are widely prevalent in the states of Rajasthan and Madhya Pradesh and to lesser extent in other parts of the country. The Commission after an in depth study of the Child Marriage Restraint Act, 1929 recommended to the Union of India to bring in certain changes in the Act. But unfortunately, the request of the Commission was turned down by the Union on the pretext that the Act is implemented by the States and it has nothing to do much in this regard.¹⁰ Apart from recommending the modifications to the Act, the Commission also requested the Union and the States to take necessary steps on the draft Marriage Bill jointly prepared by the National Commission for Women and the Department of Women and Child Development, since the provisions contained in it are stricter than the Act and it could have a substantial bearing in eradicating the child marriages. Even for this recommendation the Government of India shelved its responsibility stating the same cause as stated above.

In spite of the lackadaisical attitude of the Union of India, the Commission has decided that it should not ponder over the issue until the Union and State governments consider to do the needful in eradicating the child marriages. Accordingly, the Commission has asked one of its Member Justice Sujata Manohar, to work out the modalities and to identify the aspects which need a meritorious consideration to carry forward by the Union in amending the Child Marriage Restraint Act, 1926.

Justice Sujatha Manohar after an exhaustive study of all the relevant aspects relating the child marriage submitted a detailed report¹¹ with a good number of recommendations to be pursued by the commission, which are as follows:

1. There is a need for a compulsory registration of all marriages whether religious or civil of all religions without exception.

2. The local officers from the grassroot level be empowered to move the court for the prevention of mass marriages. Marriages that violate such orders of the court be declared as *void ad initio*.
3. As it is existed in the state of Gujarat, Child Marriage Prevention officers be appointed in the entire country to prevent and to create the ill effects of such marriages.
4. Provisions be made to file public interest litigation by, any section of the society.
5. If the boy and girl are below the prescribed age limit at the time of such marriage, they should be allowed to nullify such marriage within one year after attaining the minimum age prescribed by the Act.
6. If a girl child wants to avoid such marriage, she should be allowed to get maintenance from her husband as well as his parents or guardians until she remarries without prejudicial to her right to be maintained by her parents/guardians.
7. Apart from paying maintenance, the bridegroom also should return the entire amount received and also the expenses incurred by the bride's family.
8. The punishment clauses for violation of the Act be more stringent and the fines be heavy.

Child Prostitution:

Child prostitution is one of the important areas that loomed large the concern of the commission. Though it has been in existence since long in the society off late it has assumed alarming proportions became a part and parcel of organised crime. These are distant catchment areas from where in young children are pumped into the profession everyday through various facets by the organised gangs within and outside the country.

In view of growing awareness in the country about the menacing dimensions and implications of child prostitution, the commission acted on the press reports and issued notices to the State governments of Tamil Nadu, Goa and Department of Women and Child Development, Government of India in the year 1994 to seek their view on the situation. But unfortunately both the State governments in their reply that there were no reported cases of child prostitution in their respective States.¹² Taking into consideration of the deceptive replies of both the States, the Commission has constituted a core

group comprising, *interalia*, the National Commission for Women, the Department of Women and Child Development, selected NGO's and UNICEF to consider the issue on a regular basis.¹³

The core group upon the review of existing laws and ways of improving their enforcement has pressed for greater efforts at the national and SAARC level and public awareness campaigns etc. In order to bring awareness among the public, the evils associated with child prostitution, the Commission selected Delhi, Karnataka States (especially Belgaum and Dharwar districts) and launched major media campaign on the subject. Later the Commission asked its member to prepare an exhaustive report on the situation of child prostitution in general and in particular the selected States. The report of member has been submitted to the recently for its consideration which is considered to be highly debatable.

Apart from the following steps the Commission also released a information kit on trafficking in women and children to provide information to public with respect to the modus operandi of the traffickers, the consequences of the problem, and the role of the Commission in combating the problem.

Further, the commission exercising the powers conferred on it by the Human Rights Act, disposed of a good number of cases and awarded appropriate compensation in areas of child labour, child marriages and child prostitution.¹⁴ It has also organised a good number of seminars, workshops and various other educative programmes in various parts of the country.

Congenital Mental Disabilities:

During the year 1998-1999 the Commission paid serious attention to another important area relating to children born with disabilities due to lack of

proper health care to the disadvantaged sections of the society. The Commission constituted a core group under the Chairmanship of its Chairman Justice Venkatachaliah. As per the suggestions of the core group, decided to establish pilot projects in areas where the problems are acute and started interacting with various national institutions of nutrition to undertake specific projects.¹⁵ Further in order to evolve a plan of action for systematic improvements in the health care delivery system, it had conducted a two-day workshop on Health and Human Rights with special reference to the Maternal Anemia in April 2000.¹⁶ The workshop has identified the following aspects which are interalia as follows:

1. To declare right to health as a fundamental right and a duty be cast upon the executive to enact a comprehensive legislation. Such legislation should contain the specific measures to be taken in extending protection to women during pregnancy and as well as the child's right to nutrition and healthy environment.
2. There is a need to set up a National Literacy Mission to improve literacy rate among women at all levels with a stipulated time frame.
3. Right to education be made as fundamental right up to the age of 14 years. At the same time the facility of free education should be extended to girl child up to graduation.
4. There is a need to increase the public expenditure on Education especially, education of Women.
5. Human Rights Education be made part of the curriculum at all levels which includes both formal and non-formal education.
6. Seminars, Conferences and Workshops be organized though out the country covering up to the panchayats level highlighting the importance of Maternal Anemia
7. Maternal health education should be imparted at all levels of education and employees especially women should be trained.
8. There is an urgent need to promote the out reach of ante-natal care to the rural community.
9. Since the bio-availability is poor in Indian diet, effective steps be taken to increase vitamin deficiency.
10. The NHRC should take a lead role using all its resources in preventing the Maternal Anemia in Children.

Basing on the recommendations of the workshop, the Commission formally transmitted the union of India for appropriate action. The government is yet to respond to the recommendations of the commission. However, the government

has already extended high priority to nutritional Anemia control in its nationwide Reproductive and Child Health (RCH) programmes launched on 15th October 1997.

The RCH programme identified the following strategies:

1. Promotion of regular consumption of foods rich in iron.
2. Provision of iron and folate supplements in the form of tablets to high risk groups for prevention as well as treatment of severe anemia.
3. Improved packaging and streamlining the supply of iron and folic acid.
4. Identification and treatment of severely anemic cases.

However the Commission intends to pursue this matter with all the concerned Ministries of the Government of India and States with a hope that the governments will accept all its recommendations fully without any deviation.

Conclusion:

The above brief study highlights that the Commissions work in the last decade is highly appreciable. Over a period of time the Commission has outgrown in its endeavor to augment the human rights of the citizens of India, especially that of the Children. Today in spite of the non-cooperation of several state governments, Union of India and political parties take serious steps with respect to the protection and promotion of human rights of children in letter and spirit, the Commission atleast created a flair of hope in the young minds that somebody is there to fight for their rights.

As rightly highlighted by the Commission in its reports, the government has to evolve a curriculum on human rights education to be introduced at all levels of education compulsorily as one of the components of their study. Though a decade is not long time in the life of an institution, certainly the NHRC could create awareness among various sections of the society and the governments started

recognising its recommendations. Today Right to Education became a fundamental right only due to the sustained efforts of the NHRC. But it all depends the way governments at the Union and State level choose to implement it in realizing the aspirations of the Constitution of India.

As rightly appealed by the Commission, the political parties should wake from their slumber and take an oath to protect the rights of the child. To achieve this, the people also should come forward to extend their support, especially with respect to eradicating child marriages. Apart from the few areas on which the Commission concentrated it has an onerous task on its shoulders to identify various other aspects in protecting the rights of children within and outside the family system. Further, it has to establish a link with all the human rights centres working in various universities in the country in order to transform the goals of National Policy of Children of the government of India in to a reality.

As commented by the commission itself on its work a year after its establishment¹⁷ that it cannot begin to assert that its efforts have transformed the human rights ethos in the country or that it has as yet adequately developed a capacity to defend the least powerful of the citizens of India. But it can assert that its efforts have begun to strengthen the hands of the just and the compassionate of whom there are legion in this country, in all states and in all walks of life.

Even after a decade after its establishment, this statement remains true even today. The Commission still has to travel a long way in realizing the objectives of constitution in order to secure to all its citizens justice, liberty, Equality and Fraternity in their true perspective.

End Notes:

* The Statement has been made by the Secretary General of the UN on the eve of the 50th Anniversary of the UDHR. For details see Children's Rights: Creating a culture of Human Rights, Basic information kit no3 of the UNHCR, 1998, p.9

1. For the policy and the structure, powers and functions of the board, Department of Social Welfare, No- 1-14/74, COD 22.08.1974.
2. Virendra Dayal : Evolution of the National Human Rights Commission, 1993-2002 : A Decennial View, JNHRC, vol I 2002, p.40-59.
3. For the Text of the letter see the NHRC report 1995-96, Annexure - V pp. 84-86.
4. AIR 1993 - SCC,645
5. AIR 1997, SC 699
6. For detailed discussion see NHRC report 1996-97, pp 37-40
7. For details see NHRC report 2000 -01, pp 68-71.
8. For details see NHRC report 2001 -02, pp 81-88
9. For details see NHRC report et.seq. 1997 -98 to 2001-01
10. See the reports of NHRC, 1995-96 p25; 1996-97,p33; 1998-99,p25
11. For the detailed report of the Committee, Annual report of the NHRC, 2000-01, Annexure - 3, pp 222-226.
12. See Annual Report of NHRC 1995-96, pp 27-8.
13. See Annual Report of NHRC 1996 -97, pp 41-42
14. See Annual Report of NHRC 1999-2000,2000-2001 and 2001-2002 for the cases
15. For details see Annual Report of the NHRC 1998-99, p30.
16. For detailed session on the Recommendations see NHRC Report 2000-2001, Annexure 4, pp 228-31.
17. supra n 3 at p70

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