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RIGHTS OF CHILDREN : THE ROLE OF NATIONAL HUMAN RIGHTS COMMISSION

Dr. T. S. N. Sastry*

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 anything, it is already taking shape in the bodies and minds of our children."

-- Kofi Annan¹

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. Beings 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 the children. With the adoption of the Declaration of the Rights of the 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 UN have finally culminated the adoption Convention on the Rights of the Child on 20 November, 1989 which came into forces in less than a year (i.e.,) in September 1990.

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¹ Children's rights: Creating a culture of Human Rights, Basic Information Kit No.3, UNHCR, 1998, p.9

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.² Apart from the Board, it has constituted, a National Human Rights Commission (herein after 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 and States have introduced various schemes, enacted a good number of legislations for the promotion of the rights of 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 since its inception. This paper makes a modest attempt to analyze the role played by it in the advancement of the rights of the children of India in few areas.

Child Labour

Child Labour is one of the major areas 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 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.

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 education up to the age of 14 years. Apart from recommending to the government in order to achieve the objective of Art.45 of the Constitution, the Commission under the Chairmanship of Justice Ranganath Mishra requested the presidents of all the Political parties to take legislative,

² Department of Social Welfare, No.1-14/74, COD, 22.08.1974.

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administrative and other measures to achieve the goal of "Universalization of Elementary Education".³ The view expressed by the Commission received the support of the 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 Government during 1996-97 to enact a legislation to make free education compulsory. Thanks to the Sustained efforts of the Commission today right to education became a fundamental right.

The Commission requested the Union to amend and strictly enforce the Child Labour (Prohibition and Regulation) Act, 1986, in order to punish the guilty by enhancing the existing simple punishments and to halt the lamentable fever convictions. It has constituted an expert committee to monitor the efforts of the Ferozabad District administration in ending child labour in glass industry. Further, taking into consideration of the directions issued by the apex court in *M.C.Mehta's* case, it has launched a project entitled Child Labour Abolition Programme in the State of Uttar Pradesh with the cooperation of the state Government to eradicate child labour in the carpet industry in the state. It had further requested the Ministry of Personnel, 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 to all the state governments and Union territories.⁶

Due to the sustained efforts of the Commission during 2000-01, a large number of children working in various industries in the State of U.P., were traced and the State has created a Child Labour Rehabilitation and Welfare Fund with a grant of 100 lakhs. The Government of U.P., also 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 In spite of these efforts of the Commission, it found in its review of the implementation of the various schemes that are implemented for the promotion of the rights of the children through out the country

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 the text of the letter see NHRC Report 1996-97, pp.37-40

⁷ NHRC Report 2000-01, pp 68-71.

and found that the steps taken by the Union, the States and the Union Territories are far from satisfactory. Hence it urged the governments to give greater care in implementing the directions of the apex court in the augmentation of the rights of the children in the country.⁸

Abolition of Employment of Children by Government Servants

Since February 1997, the Commission 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, prohibiting the employment of children below the age of 14, and, the violation of it constitutes automatically a misconduct of service rules and attracts a severe penalty in the Central Civil Services (Conduct) Rules 1964, and All India Services (conduct) Rules, 1968. The same recommendation has been adopted by some states also.⁹

Child Marriages

The customary, religious, cultural, social and economic factors have laid the foundations for child marriages in India, especially in the rural folk, in spite of its prohibition by the Child Marriage Restraint Act 1929. Taking into consideration of the various ill effects that are associated with child marriages, the Commission in exercise of its powers initiated *suo motto* recommended to the Union of India to bring a number of changes in the Act. It also requested the Union and the States to take necessary steps to draft a Marriage Bill jointly prepared by the National Commission for Women and the Department of Women and Child Development to eradicate child marriages with stricter provisions than the Act to curb child marriages.¹⁰ However, all the requests of it fallen in a deaf ear. Taking into consideration of the lackadaisical attitude of the Union it constituted a one man committee to under the chairmanship of 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. After an exhaustive study, Ms. Manohar submitted a detailed report

⁸ NHRC Report 2001-02, pp 81-88.

⁹ For details see NHRC Reports et. seq. 1997-98 to 2000-01.

¹⁰ For details see NHRC Reports, 1995-96 p.25; 1996-97, p.33; 1998-99, p.25.

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with a number of recommendations¹¹ which are worth to be considered by the Union. To eradicate the menacing evil that is plaguing the lives of the children and the name of the country.

Child Prostitution

In view of the growing awareness in the country about the menacing dimensions and implications of child prostitution, and the deceptive replies by some State Governments to the Commission's notice on the situation,¹² prompted it to constitute a core group to consider the issue on regular basis.¹³ The Commission taking into consideration of the recommendations of the Core group constituted committee under the chairmanship of Justice Malimuthu to submit a report on the situation of child prostitution in general and in particular with reference to selected States. It has also released an information kit on trafficking in women and children to provide information to public with respect the *modus operandi* of the traffickers, the consequences of the problem, and the role of the Commission in combating it. Further, in exercise of the powers conferred on it, had disposed of a good number of cases and awarded appropriate compensation in area of child labour, child marriages and child prostitution and organized a good number of seminars, workshop and various other educative programmes in various parts of the country.¹⁴

Congenital Mental Disabilities:

Though the Government of India had extended high priority to nutritional Anemia control in its nationwide Reproductive and Child Health programme launched in 1997, the Commission in 1998-99 paid serious attention to this area due to proper health care to the disadvantaged section of the society. It constituted a core group under the chairmanship of its then Chairman Justice Venkatachaliah. As per the suggestions of the core group, it established 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

¹¹ For the recommendations see the detailed report, Annual Report of NHRC, 2000-01, Annex-3; pp.222-6

¹² For details see: Annual Report of NHRC 1995-96, pp 27-8

¹³ See Annual Report of NHRC 1996-97, pp 41-2

¹⁴ Annual Reports of NHRC 1999-2000; 2000-2001 and for the cases see 2001-2002

¹⁵ For details see Report of NHRC 1998-99, p.30

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. Basing on the recommendations of the Workshop,¹⁶ the Commission formally transmitted the Union for appropriate action. The government is yet to respond to the recommendations of the Commission. In spite of non-reply from the Union, the Commission intends to pursue this matter with all the concerned Ministers of the Government of India and the states with a hope that they will accept its recommendations fully without any deviation.

Conclusion

The above brief study highlights that the Commission's 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 Children. Today in spite of the non-cooperation of the Executive and the Political parties to take serious steps with respect to the welfare activities of children in letter and spirit, the Commission at least 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 a long time in the life of an institution, certainly it has succeeded in creating awareness among various sections of the society and the governments started recognising some of its recommendations to a certain extent.

As rightly appealed by the Commission, the political parties should wake from their slumber and take an oath to protect the rights of the children. To achieve this, the people also should come forward to extend their support, especially with respect to eradicating child marriages. Apart from the few area 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 to make it a reality.

¹⁶ For details see Report of the NHRC 2000-2001, Annex 4, pp.228-31

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¹⁷ Virendra
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As commented by the Commission itself on its work a year after its establishment,¹⁷ ".... 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 the constitution in order to secure to all its citizens justice, liberty, equality and fraternity in their true perspective more so in the case of children.

¹⁷ Virendra Dayal : Evolution of the NHRC, 1993-2002 : A Decennial View, JNHRC, Vol. 1, 2002, p. 70