When his niece *Suryakumari*, the famous singer and actress of yesteryears was selected as Miss Madras, *Prakasam* Jocularly asked her whether she alone participated in the contest.

Prakasam's political life which was a grand saga of glorious failures, amply proves that brilliance, learning and versatility are no substitutes for the saving grace of common sense, practical wisdom and tact.

Prakasam was a curious mixture of opposites – of penetrating intelligence and utter naivete bordering on gross stupidity. He was an odd combination of a brilliant scholar and a naïve simpleton.

The tragedy of his role as a politician was that when he should have been diplomatic and pragmatic, he was defiant and dogmatic. He loved to live in a fool's paradise of his own creation allowing emotion and sentiment to Jettison reason and reality. That was why he fell an easy victim to the wily machinations of a small band of professional politicians whose only asset was their immense capacity for intrigue. *Prakasam's* life should be taken more as a warning than as an example.

LAW RELATING TO CHILDREN IN INDIA : A NEED FOR UNIFORM CHILDREN CODE

By

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Children are the most important asset of any nation. The future of a society depends directly on how the successive generations are reared, and brought upto fulfil the requirements, which the society is faced with from time to time. Child is basically a product of environment around him. In societies where the rigours of sheer survival are beset with numerous difficulties, children also are bound to suffer in their development and growth. They develop early propensities towards fending themselves. The parental care too is considerably tampered with in the face of actual realities of the situation. The consequential problems are stupendous and finding solutions to these is a real challenge to both society and the State.

When we look at the constitutional provisions and the legislations, Central and Local, from the children's perspective, we find that Indian Parliament and State Legislatures have put in their efforts, both in the pre and post Independence eras to solve certain problems of the nation's children and protect some of their interests. It has resulted in the passing of over a hundred statutes protective of children. The Indian Judiciary, particularly the Supreme Court, has also extended its public interest jurisdiction to the cause of this weakest segment of human population by delivering certain historic decisions pertaining to the working conditions of child labour and under-trial juvenile delinquents placed in jails, *etc.* Besides the legislative and judicial efforts, various Child Welfare Programmes have been carried out and services rendered to secure the educational and health interests of the children both at the administrative and non-Governmental levels.

But, the question is whether we have achieved the goal of total childcare in India as envisaged previously under the United Nations Declaration of the Rights of the Child, 1959 and now reinforced by the United Nations Convention on the Rights of the Child, 1989. The answer is apparent and in negative. Unless we know the deficiencies and gaps in our existing law relating to childcare, no proper modifications may be made to make the law effective and suitable to meet the needs of children. Hence an attempt is made in this paper to examine the existing law relating to children in India and to find out the deficiencies and gaps in it. Appropriate suggestions are also given in this paper to make the law relating to children in India more effective, suitable and uniform.

The legal protections so far made available to children in India do not match their actual needs in many areas. The existing law provides special safeguards to children both at the substantive and procedural law, whether Civil or Criminal, and follows a policy of protective discrimination in favour of the child. Yet in terms of the child's rights, parent's duties, societies' obligations and the State's responsibilities, we still lag behind the ideas set up under the United Nations Declaration and the Convention on the Rights of the Child. What the Indian Law has provided to the child so far only partially meets his legal needs. In some areas the existing law on childcare is anomalous or ambiguous; in some areas there legislative gaps while in many areas we have no law to protect the child. In some areas, for example, guardianship and custody, the judicial law is more progressive and much ahead of the statute law. Certain prominent inadequacies in existing Indian Laws regarding childcare and protection are briefly pointed out here.

Variations in Definition of 'Child':

Before ascertaining a child's legal status, a child must be defined in law. It is a difficult task because most laws, which affect children, have their own definitions of child. Thus, under the Indian Majority Act, a minor is a person below the age of 18 years, while the different personal laws have their own concepts of minority[1]. Under various Labour Laws, a child may be a person below the age of 12[2], 14[3], 15[4], or 16[5] years. The age of childhood under the Juvenile Justice Act is 18[6] years. A conceptual confusion also persists in many areas of children's jurisprudence.

Lack of Civil Rights of Child against Parents or State:

Children have no specifically defined civil rights against their parents or the State, with the exception of a right to maintenance recognized under the Hindu and the Muslim Laws. Under the Christian, the Parsee and the Jewish Personal Laws, as they apply in India, children do not have a legal right even to maintenance. Section 125 of the Criminal Procedure Code is the only remedy available to those children against their father. The quality and adequacy or inadequacy of maintenance provided is hardly the concern of law.

Partial Application of 'Welfare of Child' Principle:

The United Nations Declaration, the Convention on the Rights of the Child and the Indian National Policy on Children equally recognize that welfare of the child must be the paramount consideration in all disputes involving children. But all the substantive or procedural laws do not give place to this

1. For example, under Muslim Law the children attain majority on the age of puberty, which varies in case of male and female children.
2. Section 24, the Plantations Act, 1951.
3. Section 67, the Factories Act, 1948.
4. Section 21, the Motor Transport Workers Act, 1961.
5. Section 40, the Mines Act, 1952.
6. Section 2(k), the Juvenile Justice Act, 2000. Prior to the amendment of this Act in 2000, age of childhood for boys and girls varied as 15 and 18 years respectively.

principle. Thus the Guardians and Wards Act, 1890, though it recognizes the welfare of children[7], does not declare it to be of paramount consideration. Neither the welfare of the child principle finds place under provisions of the matrimonial laws dealing with custody and maintenance of children during matrimonial causes, nor is it a consideration for deciding the maintenance allowance of the children, be it under the personal laws[8] or under Section 125 of the Cr.P.C. 1973. There is no obligation upon the Court to consider the welfare of a child, to be given in adoptions by the natural guardian, under the Hindu Adoption and Maintenance Act, 1956 at any stage. Only the Hindu Minority and Guardianship Act declares the welfare of the child as a paramount consideration for deciding matters of guardianship and custody[9].

Inequality and Discrimination on Grounds of Religion or Sex:

Though right to equality is a constitutionally guaranteed Fundamental Right of every child, in some matters children suffer inequalities amounting to discrimination on grounds of religion, race, caste and sex only.

Some inequalities on the ground of sex only are there under the Muslim Personal Law in matters of Hizanat (custody) of children. Under the Hanafi Law, the mother is entitled to hizanat of her male child up to the age of 7 years and her female child up to her attaining puberty, which, in absence of proof, is presumed to arrive at the age of 15 years[10]. Under the Shia Law, she is entitled to such custody in case of a male child till the age of two years only and in case of a female child till the age of seven years[11]. Thus, not only the Muslim Law rule regarding mother's custody differs from the Hindu Law, where it is five years uniformly for the children of both sexes[12], there is an inter-sectoral inequality between the rules of Hanafi and Shia Schools.

Christian children are discriminated against on the ground of sex only under the Divorce Act, 1869. The age of minority to entitle the Christian child for an order of the matrimonial Court in respect of his custody, maintenance and education under the Divorce Act, 1869 is different for the male and female children. Under this Act, the sons of Indian fathers cease to be minors on attaining the age of 16 years and the daughters on attaining the age of 13 years[13], in other cases it means unmarried children who have not completed the age of 18 years[14]. Under the Parsi Marriage and Divorce Act, 1936, such order may be passed with respect to children under the age of 16 years of both the sexes. Under the Hindu Marriage Act, 1956, this age is 18 years for children of both sexes. Thus, the Divorce Act, 1869 is discriminatory to female children on the basis of sex, it is again discriminatory to children (of both sexes) of Indian fathers on the grounds of nationality of the father. Again inequality on grounds of religion only is discernible in the rules determining legitimacy of children in Hindu Law on the one hand, and Muslim, Christian and Parsi Laws on the other. While Hindu Law confers a qualified legitimacy[15] on children of void and annulled voidable marriages, Muslim Law retains the distinction between children of void and voidable marriages. Even the applicability to Muslims of

7. Sections 7, 17, 25 Guardians and Wards Act, 1890.
8. For example, the Hindu Adoptions and Maintenance Act, 1956.
9. Section 13, the Hindu Minority and Guardianship Act, 1956.
10. Fyzee, Mohammedan Law, Oxford University Press, Delhi, p.198.
11. Mulla, the Principles of Mohammedan Law, N.M. Tripathi, Bombay, p.289.
12. Section 6, the Hindu Minority and Guardianship Act, 1956.
13. Section 3(5) the Divorce Act, 1869 as amended in 2001.
14. Ibid.
15. Section 16, the Hindu Marriage Act, 1955.

Section 112, the Indian Evidence Act, which determines the legitimacy of children of valid marriages, has been doubted[16]. Similarly, there is inequality in the consequences of illegitimacy in different Personal Laws. Such children are discriminated against in matters of guardianship, custody, maintenance and inheritance more or less under all Personal Laws. Hindu Law has, however, been most liberal and conferred the maximum benefits on this category of ill-fated children.

It is submitted that with a view to providing suitable care and protection to those children who are born illegitimate, enactment of a uniform law carrying the spirit of the United Nations Draft General Principles on Equality and Non-discrimination in respect of persons born out of wedlock, is the dire need of such ill-fated children.

Lack of Uniform Law of Adoption:

There is no general law on adoption or foster care. Adoption is recognized only in Hindu Law, which too, is not child-oriented and contains certain outdated concepts *viz*., only a Hindu child may be adopted, the adoptive parents may not adopt a son if they have a son, a grandson or a great- grandson. Similarly a daughter cannot be adopted if there is a daughter, son's daughter or son's son's daughter. No permission of the Court is required where the child is given in adoption by the natural guardian. Adoption once made is irrevocable. Non-Hindus cannot adopt a child even if they wish to do so.

Lack of Law on Child Nutrition and Child Health:

Surprisingly, there is no law on child nutrition and child health except in the sole area of compulsory and free vaccination against smallpox. There is no general law to provide pre-natal and post-natal services to the mother and child.

Lack of Law for Physically and Mentally Handicapped Children:

The hardest hit are the physically handicapped and mentally retarded children who have no legislative protection whatsoever. The Leprosy Act and the Lunacy Act, 1912 adopt a segregative policy and try to save the society from the lepers and the unsound rather than protect their interests. The Mental Health Act, 1987 that replaced the Lunacy Act too scares the mentally retarded and does not effect any major changes in the old policy except a civil and sophisticated terminology. The Ear Drums and Ear Bones (Authority for use for Therapeutic Purposes) Act, 1982 and the Eye Authority (for use for Therapeutic purposes) Act, 1982 provides some relief to the deaf and blind children respectively[17].

Lack of Statutory Financial Assistance to Poor Parents:

Neither there is any legislation providing financial assistance to the economically weak parents for the purpose of maintaining their children as available in certain developed systems[18] nor is there some scheme of social security or supplementary benefits to parents or children within the legal framework. The services provided through the Integrated Child Development Scheme are limited to certain selected projects and have no legal support. The same is the case with Supplementary

16. *Tahir Mohamood*, "Presumption of Legitimacy under the Evidence Act - A Century of Action and Reaction", J.I.L.I., New Delhi, 1972, p.781.

17. The two Acts provide for the removal of ears and eyes respectively, from the dead body of such persons who have authorized such removal, before their death.

18. Under the English Child Benefit Act, 1975 – a person responsible for maintaining a child below the age of 16 years and if the child is receiving a full-time education under the age of 19 years, is entitled to financial assistance called a "child benefit" (Sections 1 and 2). Financial assistance is also available under the Social Security Act, 1975 and the Supplementary Benefit Act, 1966.

Nutrition and the Minimum Needs Programme, immunization and other services provided by the State.

Deficient Education Laws:

Primary Educational Acts which makes education universal compulsory and free have yet to record a cent per-cent enrolment, attendance and area coverage. These Acts provide no coverage to school health, nutrition services, play and recreational services as part of the schooling system. After repeated recommendations of the Indian Supreme Court[19], the right to primary education is included in the list of Fundamental Rights. By amending the Constitution of India, Article 21-A[20] is inserted. However, the Primary Education Acts are yet to be amended so as to effectuate Article 21-A of the Constitution.

Piece-Meal Protection to Child Labour:

The concepts of hazardous and non-hazardous employment not having been defined, legal protection to child labour remains piece-meal in India. Many legislations relating to child labour have been passed in India during the last century. But the existing legal framework for employment of children is rather dispersed and patchy. The Child Labour (Prohibition and Regulation) Act, 1986 prohibits the employment of children below 14 years of age only in certain occupations and processes specified in the Schedule of the Act. This Act permits child labour in rest of the occupations by regulating the conditions of work[21]. The Government of India adopted a new set of policies towards working children by which Government would no longer ban child labour, but would instead, seek to ameliorate the conditions of working children. The Government would also endeavour to provide voluntary part-time, non-formal education for working children rather than press for compulsory universal primary education. Thus, India is the largest producer of child labourers and illiterates in the world[22].

Conflicts Between Judicial and Statutory Laws:

Though the Judiciary, with the aid of principle of welfare of the child, has brought up the law of guardianship and custody to the developed systems and has also achieved a uniformity between different Personal Laws, yet the statutory law or the customary laws stand in their place with many discrepancies and gaps and lag behind the Judicial Law. For example, all personal laws and the Guardians and Wards Act, 1890[23] retain the rule of paternal supremacy. The Muslim Law does not give to the mother even a second place in the race for guardianship. Custody of the child belongs to the father as of right, except a limited right of the mother to have the custody of children of tender years, the upper age for which varies under different Personal Laws[24]. On the other hand, the Judiciary considers welfare of children as the paramount consideration in deciding such matters and paternal supremacy stand superseded.

Lack of Specialised Children Courts:

The judicial machinery for child protection remains to be fully child-oriented. Though juvenile justice is statutorily promised to the delinquent and neglected children, yet there is

19. For example, *J.P. Unni Krishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178; *Mohini Jain v. State of Karnataka and others*, AIR 1992 SC 1858; *Re Kerala Education Bill*, AIR 1958 SC 956.

20. Article 21-A, the Constitution of India as amended in 2002: 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.

21. Section 3, the Child Labour (Prohibition and Regulation) Act, 1986.

22. Report of International Labour Organisation, Geneva, 2002

23. Section 19(b) Guardians and Wards Act, 1890.

24. Supra, Note 11 and 12.

great deficiency of proper Children Courts, Welfare Boards and the Juvenile Act Institutions, both short-term and long-term. Many children lie detained in prisons waiting for juvenile justice.

Civil justice is not even claimed to the juvenile. A next-friend or a guardian-ad-litem is their only privilege[25]. The structure and functioning of the Civil Courts or even the Family Courts can hardly guarantee a patient hearing needed to keep the welfare of the child as a paramount consideration in all disputes pertaining to him. The Civil Courts or Family Courts have no powers to commit a child in need of a care and protection to a Juvenile Home, to keep him in their own wardship or appoint supervisors in respect of children, in any situation needing a watch over the parents or guardians.

Inadequacy of Auxiliary Services under Juvenile Laws:

Although certain institutional and support services[26] have been provided under the Juvenile Justice Act, 2000, still a big gap is left in administrative machinery required to properly implement the Juvenile Justice Act and other allied laws and provisions on childcare. It is regrettable that the conceptual advances made in the philosophy of juvenile justice and childcare and welfare have not found their reflection even in the recent juvenile legislation in India. There is need to recognize and statutorily provide for some auxiliary services such as Juvenile Police Bureaux, Child Guidance Clinics and Child Orientation and Research Institutes, to train the entire personnel involved in the implementation of juvenile justice. Some standby local agency is also required to protect and provide children in their immediate needs.

25. *See* Order XXXII, Code of Civil Procedure, 1908.

26. For example, the Probation Officer and the panel of honorary social workers provided under the Juvenile Justice Act, 2000.

Lack of an Integrated Approach to Childcare:

All our efforts in the arena of juvenile justice - civil, criminal and protection are disintegrated. A proper linkage between the judicial childcare and administrative childcare on the one hand, and the Governmental and non-Governmental efforts on the other hand is missing. The role of Voluntary Organisations has not been properly defined. The non-institutional services of the society are neither recognized nor regulated by the law. Due to lack of proper liaison and co-ordination, the child welfare becomes segmented and misses a look at the child as an integral whole.

Conclusion and Suggestions:

The above discussion reveals that the existing legislative framework only partially meets the requisite legal needs of the children in terms of the United Nations Convention on the Rights of the Child. The UN Convention on Children is now a legal document and an integral part of International Law. India being a party to it and having ratified it is legally obliged to incorporate the rights of the child contained in the Convention into its legal framework. Further, the State has to report regularly on its efforts to implement these rights to the permanent Committee set up by the UNO. The UN Convention is to be implemented in its spirit and words, to the extent we can, in our socio-economic conditions.

Review of Existing Legislation on Children:

The most important task for the State is of getting reviewed the entire Indian Law relating to children in detail in the context of the United Nations Convention on the Rights of the Child, and to find out the areas where the Indian Law responds to the requirements of the Convention and the areas where it lacks or fails. The gaps and lacunae may be

supplied by amending the existing laws or by enacting new laws wherever required, so as to provide legal coverage to all the Rights of the Child in the Convention.

Enactment of Uniform Children Code:

There is an urgent need to enact the Uniform Children Code for India, which should cover the entire gamut of legislation in India relating to children in one compass. Such Code should contain not only the substantive rights of children contemplated in the United Nations Convention, but also provide an integrated set-up of exclusive Children Courts to adjudicate upon these rights and an integrated administrative set-up from the Centre to the village level to look after the actual implementation of the child's rights.

BROADCASTING AND COPYRIGHT LAW

By
—N. ASHWANI KUMAR[1]

Introduction

Copyright is a legal mechanism that reconciles the partly shared, partly contradicting interests of authors who give expressions to ideas; publishers and other entrepreneurs who disseminate those expressed ideas and members of the public who use these ideas. Copyright Law, which came into existence as a result of the impact of the printing press had on the society, was forced to adapt the new technologies in order to survive as an effective system. In this process of adaptation, Copyright Law recognized certain new productions as copyrightable works and also recognized certain new rights on authors by expanding the meaning of the copyright[2]. Right to make cinematograph film and sound recording as copyrightable works are examples of this process. With the advent of new technologies like public address systems and broadcasting technology, the works of the authors were made available to the public even without performing the work in the presence of the public. Copyright Law adapted these technologies into its fold by conferring a new right called 'right to communicate the work to the public,[3] on the authors/owners of the copyrightable works. This right is an extension to the right to perform the work in public. The technologies like loudspeakers, radio, television and cable have scattered the audience into rooms and thereby, destroyed the commonness or unity of the public. The digital technology has even destroyed the unity of time and action by enabling the public to access the copyrightable work of the authors/owners from their home or from the places of their choice and at their convenient time. Thus, there is a major shift from traditional public to the new public in the concept of communication to the public[4].

1. The Author is a practising Advocate at the High Court of Andhra Pradesh, Hyderabad.
2. Section 14 of the Copyright Act, 1957 lists out the rights included in the copyright, which is a bundle of rights.
3. Section 14(a)(iii) recognizes the right of communication of authors of literary, dramatic and musical works, clause (c)(ii) recognizes the right of authors of artistic works, clause (d)(iii) of the authors of sound recording. Section 2(dd) of Act defines broadcast as communication to the public (i) by means of wireless diffusion, whether in anyone or more of forms of signs, sounds or visual images or (ii) by wire and includes a rebroadcast.
4. Referred from the Internet and Author's Rights by Gendreau, Sweet and Maxwell, 1999