

# ANDHRA LEGAL DECISIONS

JOURNAL

1998 (4)

## LEGAL PERSPECTIVE OF CHILD WELFARE AND CONSTITUTIONAL SAFEGUARDS - AN ANALYSIS

--P. PRAKASA RAO,

Section Officer, Law Department,  
Secretariat, Hyd.

### INTRODUCTION :

It is an endeavour to focus the plight of certain neglected class of children in our great peninsula and to enlighten the legal position at which we stand, in order to ensure total euphoria on child welfare. We have resolved to constitute our country into a Sovereign Socialist Secular Democratic Republic and our country is a welfare State. Equality is our motive.

*Who is a child :-* The statutory definition of the word "child" means a person who has not completed his fourteenth year of age *vide* Section 3(a) of the Dangerous Machines (Regulation) Act, 1983 (Central Act No.35 of 1983). The same definition holds good under the provisions of Minimum Wages Act, 1948 (Central Act 11 of 1948). Section 2(c) of the Factories Act, 1948 (Act LXIII of 1948 as amended upto Act 20 of 1987) defines "child" means a person who has not completed his fifteenth year of age. Section 4 of the Fatal Accidents Act 1855 (Central Act XIII of 1855) states "child" shall include son and daughter, and grandson and granddaughter, and stepson and step-daughter. Section 3(b) of the Maternity Benefit Act, 1961, (Central Act No.53 of 1961) as amended by Act Nos.51 of 1970, 21 of 1972, 52 of 1973, 53 of 1976 and Act 61 of 1988) defines "child includes a still born child.

"Adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year (*vide* definition in Section 2(b) of the Factories Act, 1948).

"Adult" means a person who has completed his eighteenth year of age (*vide* definition in Section 2(a) of the Factories Act, 1948).

"Young person" means a person who is either a child or an adolescent (*vide* Section 2(d) of the Factories Act, 1948)

Under the Indian Majority Act, 1875, (Central Act 9 of 1875) a Child attains majority on the completion of eighteen years. Child includes girl child.

### *Constitutional Safeguards :*

Our Constitution guarantees rights to the child adequately in two ways one the fundamental rights, another is the directive principles of State Policy.

Articles 14 to 17 enjoin right to equality. Articles 19 to 22 enjoin right to freedom. Articles 23 to 24 enjoin right against exploitation. Article 25 states right to freedom of religion. Article 29 states cultural and educational rights. Part IV-Directive Principles of State Policy of the Constitution enshrines opportunities, facilities and dignity to protect the children and youth (Article 39 f) Article 42 provides for maternity relief. Article 45 contemplates free and compulsory education for all children till they complete 14 years of age. Article 47 envisages duty of the State to protect the rights of the children to nutrition, and health. Articles 32 and 226 provide Constitutional remedies.

### *Legislative Protection :*

Considerable central laws are available to protect child welfare other than Constitutional

safeguards and they can be grouped into welfare legislations and labour legislations.

Some of the important welfare legislations that are in force in India are listed below :

1. Guardian and Wards Act, 1890 (Central Act No.8 of 1890).
2. Child Marriage (Restraint) Act, 1929 (Central Act No.19 of 1929).
3. Hindu Marriage Act, 1955 (Central Act No.25 of 1955).
4. Hindu Adoption and Maintenance Act, 1956 (Central Act No.78 of 1956).
5. Hindu Minority and Guardianship Act, 1956 (Central Act No.32 of 1956).
6. Probation of Offenders Act, 1958 (Central Act No.20 of 1958).
7. Orphanages and other Charitable Homes (Supervision and Control) Act, 1960 (Central Act No.10 of 1960).
8. Juvenile Justice Act, 1986 (Central Act No.53 of 1986).
9. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (Central Act No.57 of 1994).
10. Citizenship Act, 1955 (Central Act No.57 of 1955).
11. Protection of Civil Rights Act, 1955 (Central Act No.22 of 1955).
12. The Young Persons (Harmful Publication) Act, 1956 (Central Act No.93 of 1956).
13. The Registration of Births and Deaths Act, 1969 (Central Act No.18 of 1969).
14. Infant Milk Substitutes, Feeding Bottles and Infant Foods, (Regulations and Production, Supply and Distribution) Act, 1992 (Central Act No.41 of 1992).
15. The Children Act, 1960 (Central Act No.60 of 1960).

16. Vaccination Act, 1880 (Central Act 13 of 1880).
17. Women's and Children's Institutions (Licensing) Act, 1956 (Central Act 105 of 1956).
18. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (Central Act 46 of 1988).
19. Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).
20. National Cadet Corps Act, 1948 (Central Act No.31 of 1948).
21. Medical Termination of Pregnancy Act, 1971 (Central Act 34 of 1971).
22. Epidemic Diseases Act, 1897 (Central Act 3 of 1897).
23. Births, Deaths and Marriages Registration Act, 1886 (Central Act 6 of 1886).
24. Delhi Primary Education Act, 1960 (Central Act 39 of 1960).
25. Delhi School Education Act, 1973 (Central Act 18 of 1973).
26. Indian Penal Code, 1860 (Central Act 45 of 1860).

Labour Legislations on this area, are listed below :

1. Apprentices Act, 1961 (Central Act No.52 of 1961).
2. Children (Pledging of Labour) Act, 1933 (Central Act 2 of 1933).
3. The Child Labour (Prohibition and Regulation) Act, 1986 (Central Act 61 of 1986).
4. The Bonded Labour System (Abolition) Act, 1976 (Central Act No.19 of 1976).
5. Motor Transport Workers Act, 1961 (Central Act No.27 of 1961).
6. Factories Act, 1948 (Central Act No.63 of 1948).

7. Minimum Wages Act, 1948 (Central Act No.11 of 1948).
8. Plantations Labour Act, 1951 (Central Act No.69 of 1951).
9. Trade Unions Act, 1926 (Central Act No.16 of 1926).
10. Workmen's Compensation Act, 1923 (Central Act No.8 of 1923).
11. Mines Act, 1952 (Central Act No.35 of 1952).
12. Beedi and Cigar Workers' (Conditions of Employment Act, 1966 (Central Act No.32 of 1966).
13. Merchant Shipping Act, 1958 (Central Act No.44 of 1958).
14. Maternity Benefits Act, 1961 (Central Act No.53 of 1961).

Addendum, various States made various welfare enactments on this area, the only aim is to protect the child from slavery, bonded labour trafficking, prostitution, pornography and dangerous forms of labour.

#### *U.N. Convention of the Rights of the Child :-*

The United Nations General Assembly, adopted the Convention on the rights of the child on 20-11-1989 and acceded by our country on 11-12-1992. The United Nations Convention consists of 54 articles. The first part of 41 articles deals with the rights of the child, the second and third part deal with implementation and procedure. To date, it has been ratified by 154 countries including our country. The United Kingdom ratified on 16-12-1991.

#### *Background of the Convention :*

In 1924, the League of Nations adopted the Declaration of Rights of the child. The Declaration emphasised the physical needs of children. After the second world war, the League of Nations was replaced by the United Nations and it produced a universal Declaration of Human Rights in 1948. It was followed

by the declaration on the Rights of the child announced on the 20th November, 1959 on the Principle that mankind owes to the child. Exactly after (30) years of the adoption of the first declaration on the rights of the child, the General Assembly of the United Nations unanimously adopted the Convention.

#### *Doctrine of Doli Incapax :*

Infants are divided into three categories, (1) Child under 8 years of age (2) Children falls from 8 to 14 years of age and (3) Falls between 14 to 21 years of age. A child under seven years of age, both under English law and Indian law is considered to be incapable of possessing any *mens rea* that is, he is *doli incapax*. The law relating to this subject in our country is given in Sections 82 and 83 of the Indian Penal Code, 1860 (Central Act No.45 of 1860) and they run as follows :

Section 82 :- "Nothing is an offence which is done by a child under seven years of age."

Section 83 :- "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

#### *Conclusion :*

Keeping in view of the adage, "The child is the father of the man", the State should see the welfare of the child. The provisions depicted in the Constitution on this subject are quite sufficient to achieve the object. Indeed no further law is required to meet the situation. The extant law is suffice, provided the executive operate it in proper perspective. An uniform law covering all aspects is advocated. The Judge made law on this area should not be ignored by the respondents. They should implement it with due regard. There are many noteworthy Judgments declared by the Supreme Court and other High Courts in this area.

In *Maharashtra State Board of Secondary and Higher Education v. K.S. Gandhi*, 1991 SCC 716, right to Education at the secondary stage was held to be a fundamental right. In *J.P. Unnikrishnan v. State of Andhra Pradesh*, 1993 (1) SCC 642, a Constitution Bench had held education upto 14 years to be fundamental right; right to health has been held to be fundamental right; right to potable water has been held to be fundamental right; meaningful right to life has been held to be a fundamental right. The child is equally entitled to all these fundamental rights. In *M.C. Mehta v. State of Tamilnadu and others*, 1996 (6) SCC 756, the Supreme Court considered Constitutional perspective of the abolition of the Child labour below 14 years of age in the dangerous Sivakasi Match Industries.

In *Bandhua Mukti Morcha v. Union of India and others* reported in 1997 (3) SLJ 22 (SC) the Apex Court directed the Central Government to convene a meeting within two months to evolve principles to policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta's* case, 1996 (6) SCC 756.

It is high time to convene a meeting as directed, also it is better to enact a comprehensive legislation covering all aspects on child protection applicable to

the whole of the nation in terms of Article 253 of the Constitution as we have duly acceded the United Nations Convention on the rights of the child on 11-12-1992. It is felt that the comprehensive legislation on this subject may help a lot to achieve the object. Creating a Children's Rights Commission at each State would be an important reform for the better protection of our children and young people. The Commission's work will no doubt improve law, policy and practice affecting children.

Norway was the first country on the globe to appoint an Ombudsman for children during 1981. The role of the Ombudsman is to protect and to improve interests of children. The Norwegian experience may be brought to our Nation. The institution of Ombudsman may be introduced in each State.

It is the duty of the State to protect disabled children, orphans, destitutes, and deserted children from the social evils. More voluntary organisation may come forward to save child abuses.

The law makers are earnestly requested to believe the grand old slogan "today's children are tomorrow's citizens" and to their best to make a comprehensive, uniform and viable law on this subject duly considering the rights of the children on survival, development and protection.

---

**A critical note about the decision in  
Sunkara Lakshmi (died) etc., v. Vadlapudi Venkateswara Rao etc.**

Reported in 1998 (2) ALD 249 = 1998 (1) ALT 807

**--A.S. RAMACHANDRA MURTHY,**  
Advocate, Kakinada

1. The main questions that arose for consideration in the above decision are : Firstly, whether an appeal preferred by a transferee of a promissory note who is granted a decree against his transferor only but not against the promissors of the pronote, is

maintainable under law, and secondly, whether the High Court in a second appeal can go into a question of fact. This article is not about these two aspects.

2. While deciding those aspects,