The UN Convention on the Rights of Children, 1989
its optional protocols - Indian Response

R Radhakrishnan
Symbiosis Law School
Hyderabad

Email: krishnanrr@gmail.com
“Keep me away from the wisdom which does not cry, the philosophy which does not laugh and the greatness which does not bow before children”.

Khalil Gibran
Human Rights

- Human rights are moral principles or norms, which describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international law.

- They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being," and which are "inherent in all human beings" regardless of their nation, location, language, religion, ethnic origin or any other status.
All human beings are born free and equal in dignity and rights.

— Article 1 of the United Nations Universal Declaration of Human Rights (UDHR)

The Convention on the Rights of the Child (CRC) - adopted in 1989

• Under the Convention, every child is recognized as a subject of rights, with the right to special protection.
• Equal and inalienable human rights are to be enjoyed by all children.
The Preamble

- Recalls the basic principles of the United Nations and specific provisions to certain relevant human rights treaties and proclamations such as the Universal Declaration of Human Rights;

- Reaffirms the fact that children, because of their vulnerability, need special care and protection; and,

- Places special emphasis on the primary caring and protective responsibility of the family, the need for legal and other protection of the child, the importance of respect for the cultural values of the child’s community, and the vital role of international co-operation in achieving the realisation of children’s rights.
General Principles of the Convention

The right to life, survival and development (art. 6)

The best interest of the child (art. 3)

Non-discrimination (art. 2)

The right to express his or her views freely and be heard (art. 12)
DEFINITION

HUMAN RIGHTS are the rights that all people have by virtue of being human beings.

HUMAN RIGHTS are derived from the inherent *dignity* of the human person and are defined internationally, nationally and locally by various law making bodies.
DEFINITION

HUMAN RIGHTS is defined as the supreme, inherent, and inalienable rights to life, to dignity, and to self-development. It is concerned with issues in both areas of civil and political rights and economic, social and cultural rights founded on internationally accepted human rights obligations.
HUMAN RIGHTS

RIGHTS – moral power to hold (rights to life, nationality, own property, rest and leisure), to do (rights to marry, peaceful assembly, run for public office, education), to omit (freedom from torture and cruel, inhuman or degrading punishment, freedom from arbitrary arrest, detention or exile) or to exact something (equal protection of the law, equal access to public service, equal pay for equal work)

HUMAN RIGHTS coined by Eleanor Roosevelt to replace *Rights of Man*

NATURE – Human rights are more than legal concepts: they are the essence of man. They are what make man human. That is why they are called human rights; deny them and you deny man’s humanity (Jose Diokno)
Characteristics of Human Rights

- Universal
- Internationally guaranteed
- Legally protected
- Protects individuals and groups
- Cannot be taken away
- Equal and indivisible
- Obliges States and State actors
Legal basis - UN Charter

- Sets the promotion of and respect for human rights for all as one of the aims of the UN
- Establishes legal obligations for Member States to take action to achieve respect for human rights
Legal basis

- Human rights Treaties
- Conventions, Covenants
- Declarations
  - Contain detailed lists and definitions of human rights and obligations of the State
Five categories of Human Rights

- **Civil** – the right to be treated as an equal to anyone else in society
- **Political** – the right to vote, to freedom of speech and to obtain information
- **Economic** – the right to participate in an economy that benefits all; and to desirable work
- **Social** – the right to education, health care, food, clothing, shelter and social security
- **Cultural** – the right to freedom of religion, and to speak the language, and to practice the culture of one’s choice
SOME CIVIL RIGHTS

- Life
- Belief in own religion
- Opinion
- Free speech
- Non-discrimination according to sex
- Marry
- Race
- Cultural background
SOME POLITICAL RIGHTS

- Vote in elections
- Freely form or join political parties
- Live in an independent country
- Stand for public office
- Freely disagree with views and policies of political leaders
SOME ECONOMIC RIGHTS

- Jobs
- Work without exploitation
- Fair wage
- Safe working conditions
- Form trade unions
- Have adequate food
- Protection against labor malpractices
SOME SOCIAL RIGHTS

- Housing
- Education
- Health services
- Recreation facilities
- Clean environment
- Social security
SOME CULTURAL RIGHTS

- Use own language
- Develop cultural activities
- Ancestral domains
- Develop own kind of schooling
"Leaders of the 21st century must deliver on their promises to invest in the future and start investing in books, education and hope, rather than in weapons, war and conflicts."

– Malala Yousafzai
Aylan
8 main clusters of provisions:

- General measures of implementation (arts. 4, 42, 44.6)
- Definition of the child (art.1)
- General principles (arts. 2, 3, 6 and 12)
- Civil rights and freedoms (arts. 7-8, 13-17 and 37.a)
- Family environment and alternative care (arts. 5, 18.1&2, 9-11, 27.4, 20-21, 19, 25 and 39)
- Basic health and welfare (arts. 6.2, 23-24, 26 and 18.3, 27.1&2&3)
- Education, leisure and cultural activities (arts. 28-31)
- Special protection measures (arts. 22, 30, 32-39)
Provisions of the Convention
some concrete examples...

- Right to be registered at birth
- Right to a name and nationality
- Right to education
- Right to health
- Protection from abuse in the family
The Committee on the Rights of the Child

- **Article 43**: For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

- The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems (....)

- Members are elected for a period of four years.
The reporting system

- Under article 44:
  1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights
    (a) Within two years of the entry into force of the Convention for the State Party concerned;
    (b) Thereafter every five years.
  2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention.

(...)
Reporting process, sources of information:
On the basis of the State party report and information from other sources, a dialogue takes place between a State party delegation and the Committee.
Main outcomes

- Concluding observations and recommendations adopted by the CRC in respect of individual States parties
- General Comments on pertinent thematic subjects of general interest (e.g. on aims of education)
- Recommendations adopted following days of general discussion (e.g. on violence against children)
General Comments adopted by the Committee

- No. 12 The right of the child to be heard (2009)
- No. 11 Indigenous children and their rights (2009)
- No. 10 Children’s rights in Juvenile Justice (2007)
- No. 9 The rights of children with disabilities (2006)
- No. 8 The right of the child to protection from corporal punishment and other degrading forms of punishment (2006)
- No. 7/Rev.1 Implementing child rights in early childhood (2005)
- No. 6 Treatment of unaccompanied and separated children outside their country of origin (2005)
- No. 4 Adolescent Health (2003)
- No. 3 HIV/AIDS and the rights of the child (2003)
- No. 2 The role of independent human rights institutions (2002)
- No. 1 The aims of education (2001)
The Optional Protocols to the Convention on the Rights of the Child

- In May 2000, the General Assembly adopted two optional protocols to the CRC (entry into force in 2002):
  - on the sale of children, child prostitution and child pornography (132 Parties), and
  - on the involvement of children in armed conflict (130 States parties).
- The Protocols are subject to the standards and principles of the Convention, such as «the best interests of the child».
- In the same way as under the Convention, there is an obligation for States parties to report periodically to the Committee on the Rights of the Child.
What is an Optional Protocol?

- Optional Protocols are created to complement an existing convention and recognize new commitments governments need to respect (for example: to protect children from sexual exploitation or to improve the protection of children carry the same strength as a convention and can be used in the same way.
- For example: the Convention on the Rights of the Child has three Optional protocols –
  - The First protects the Rights of Children who are in armed conflicts
  - The Second protects the children who are victims of different forms of sale and sexual exploitation;
  - The Third has to do with a ‘communications Procedure’ and how children or their representatives can file a complaint when their rights have been violated.
The Indian Context - Nature of Rights

- Fundamental rights are equal for all.
- Rights are justiciable – Article 32
- Fundamental rights are not absolute.
- They limit the authority of the central and state governments.
- Fundamental rights distinguish between citizens and foreign nationals.
- They can be suspended during emergency.
- Parliament can amend Fundamental rights.
Right To Equality

Article 14 to 18
Right to Equality, Article-14 to 18

- Equality before law Article-14 provides that «the state shall not deny to any person equality before law or the equal protection of law within the territory of India ».
- Prohibilation of Discrimination, Article-15
- Equality of opportunity Article-16
- Abolition of untouchability Article-17
- Abolition of titles Article-18
Right to Freedom

Article 19 to 22
Right to Freedom

- **Freedom of speech and expression Article-19**
- Freedom of Press – Article-361 A has been inserted according to which the press has been given the power to publish an account of the proceedings of the Indian Parliament and states legislatures.
- Right to information is linked to the freedom of speech and expression granted in Article 19 in the constitution.
- Freedom to assemble peacefully without Arms.
- Freedom to form associations and unions.
- Freedom to move freely throughout the territory of India.
- Freedom to reside and settle in any part of the territory of India.
- Freedom to practise any profession or to carry on any occupation, trade or business.

- **Protection in respect of conviction of an offence Article-20**
- Protection of life and personal liberty Article-21
- Right to education Article-21 A
- Protection against arrest and detention against certain cases Article-22
Right against Exploitation

Article 23-24
Right against exploitation, Article-23-24

- Prohibition of traffic in human beings and forced labour Article-23: This article prohibits the traffic in human beings and forced labour.

- Prohibition of compulsory services Article-23: under this article the state can force people to do compulsory service for public purposes.

- Prohibition of Child Labour Article-24: Children below the age of fourteen years will not be allowed to work in factories, mines or in other dangerous places so that their health is not adversely affected.
Right to Religious Freedom

Article 25 to 28
Right to religious freedom, Article-25 to 28

- Freedom to profess and propagate any religion, Article-25
- Freedom to manage religious affairs, Article-26
- Freedom not to pay taxes for the promotion of any particular religion, Article-27
- No religious instructions in government educational institutions, Article-28(1)
- In private educational institutions religious education not against the will, Article-28(3)
Cultural and educational rights

Article 29 to 30
Cultural and educational rights, Article 29 to 30

- Protection against interest of minorities, Article-29(1)
- Freedom to get admission in educational institutions, Article-29(2)
- Right to minorities to establish educational institutions, Article-30(1)
- No discrimination while giving grants - Article-30(2)
Right to Constitutional Remedies.

Article-32
Right to constitutional remedies, Article-32

- Article-31(1), provides that a citizen can approach the supreme court of India by due process of law for the implementation of the Fundamental Rights included in Chapter 3 of the constitution.

- Article-32(2), the Supreme court of India has the right to issue writs in the nature of the Habeas Corpus, Mandamus, Prohibition, etc.

- Article-32(3), The Indian Parliament can empower any court to issue notice within its jurisdiction without infringing or influencing the powers of the Supreme Court of India.

- Article-32(4), the state cannot suspend the right to constitutional remedies except in cases provided in the Indian Constitution.
Critical Evaluation of Fundamental Rights

Public Opinion
Importance of Human Rights

- Foundation of democracy
- Check on the arbitrariness of the Government
- Create proper conditions for the development of Men
- Foundation of Rule of law
- Establishment of Secular state
- Protection of the interests of the minorities
- Reconciliation between individual interests and social interests.
The Convention on the Rights of the Child (CRC) includes a number of articles (or sections) that address the protection of children from sexual exploitation. For instance:

- Article 19 asks government to ensure that children are properly cared for and protected from all forms of violence, including sexual abuse.
- Article 32 protects children from work that is dangerous, or that might harm their health or their education.
- Article 34 protects children from ‘all forms of sexual exploitation and sexual abuse’.
- Article 35 asks governments to ensure children are not kidnapped, sold.
- Article 39 asks governments to help child victims with every step of their recovery.