



सत्ये स्थितो धर्मः

NATIONAL LAW UNIVERSITY, ODISHA

SYLLABUS

CHILD RIGHTS

[SEMINAR PAPER FOR BA/
BBA LLB STUDENTS, SEMESTER IX]

Course Designed By:

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COURSE DESCRIPTION

The term 'child' within itself encompasses a bundle of contradictions. On the one hand, a child is seen as 'innocent' and 'vulnerable', in need of care and protection. On the other hand, a child is seen as a 'right-bearer'. He/she has a right to life with dignity, a right to voice his/her opinion, a right to participate in decision making, when it comes to matters concerning his/her interest.

In such a context, this Course tries to look at the scope of the term 'child', analyse a child's basic and inalienable rights, find the legal provisions which enumerate the same, and even criticise the limitations that are imposed by the State in their implementations of these rights.

PROGRAMME OBJECTIVES

- A student taking this course will be able to understand the various issues and problems that a child faces in today's society.
- Such student will be able to identify the rights provided for the protection of the children in the United Nations Convention on the Rights of the Child, 1989 as well as the domestic legal instruments and how these rights get violated.
- Such student will be able to discuss the gaps in the law, which leave the child more vulnerable and prone to abuse.
- Such student will be in a position to discover the reasons why violations of a child's rights occur even today as well as suggest solutions to the problem of lack of proper implementation (of laws and policies) that is prevalent in various parts of India when it comes to guaranteeing children's rights.
- Such student will be exposed to the vast scope of research in Child Rights.

Along with the above mentioned, this course will attempt to develop a sensitivity in the students' minds regarding the plethora of concerns faced by children coming from different strands of society.

PROGRAMME LEARNING OUTCOMES

Students will be:

- Equipped to identify issues related to children
- Suggest changes (including policy changes)
- Be interested in a career and be in a position to deal with real life problems involving children's issues
- Know the tools to research in the Child Rights area
- Be prepared for attempting Competitive Examinations

PEDAGOGY

- Discussion of various articles
- Deliberating on the perspectives from Developed and Developing Countries
- Analyzing judicial pronouncements
- Getting acquainted with using some relevant online resources

MODULE DIVISION

- MODULE I A -An introduction to the concepts of childhood and children's rights – 7 Hours
- MODULE I B: Broad categories of children's rights – 4 Hours
- Module II - Juvenile justice in India
 - History – 3 Hours
 - Children in conflict with the law - 7 Hours
 - Children in need of care and protection – 7 Hours
 - Offences against children – 6 Hours
- MODULE III: A child's right against any form of economic exploitation – 7 Hours
- MODULE IV: Sexual Offences against children – 7 Hours

- MODULE V: A child's right to education – 7 Hours
- MODULE VI: Conclusion with suggestions – 9 Hours

MODULE I A: An introduction to the concepts of childhood and children's rights – 7 Hours

When we try to understand the 'rights of a child', the first question that comes to mind is how do we define a 'child'? Can there ever be a universal definition of 'childhood'? This Module will try to answer this question as well as analyse briefly all the international legal instruments that have provisions on 'children's rights'.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. Who is a child?
2. Why are children's rights important?
3. Should children at all have rights?
4. How did the concept of 'children's rights' evolve?

Legal Instruments/Provisions:

- League of Nations Declaration of the Rights of the Child, 1924
- United Nations Declaration of the Rights of the Child, 1959
- United Nations Convention on the Rights of the Child, 1989 Art 1
- African Charter on the Rights and Welfare of the Child, 1990

Book Chapters:

- Philippe Aries, "The Discovery of Childhood" in *Centuries of Childhood: A Social History of Family Life* (Vintage 1962) 33-46
- Viviana A. Zelizer, "Introduction" in *Pricing the Priceless Child: The Changing Social Value of Children* (Princeton University Press 1994) 3-15

- Holly Brewer, “The Empire of the Fathers” in *By Birth or Consent: Children, Law and the Anglo-American Revolution in Authority* (Chapel Hill North Carolina Press 2005) 347-352

MODULE I B: Broad categories of children’s rights – 4 Hours

This Module will deal with the core principles that govern children’s rights. Any child cannot be discriminated on the ground of race, religion, culture, language, abilities etc. This Module will also deal with the constant dichotomy between upholding the ‘best interest of the child’ and ‘respecting the views of the child’.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. What is the ‘best interest of the child’?
2. Is the debate on children’s ‘rights’ v ‘interest’ correct?
3. What are children’s survival rights and developmental rights?
4. What are children’s protection rights?
5. What are children’s participation rights?

Legal Provisions:

- United Nations Convention on the Rights of the Child, 1989 Art 3
- United Nations Convention on the Rights of the Child, 1989 Art 6
- United Nations Convention on the Rights of the Child, 1989 Art 12

Journal Article:

- Elaine E. Sutherland, *The Child’s Right to Life, Survival and Development: Evolution and Progress* (2015) 26(2) Stellenbosch Law Review 272-294
- Vicki Coppock, ‘Actualisation of Children’s Participation Rights’ (2013) 3(2) Global Studies of Childhood 99-103

Website Content:

- ‘Understanding four most important sets of children’s rights’ (*Save the Children*, 15 September 2016) <<https://www.savethechildren.in/child-protection/understanding-four-most-important-sets-of-childrens-rights>>

Module II - Juvenile justice in India

A) History – 3 Hours

- Tracing the history of juvenile justice in the country
- Which general (guiding principles) principles are important for the care and protection of children?

B) Children in conflict with the law - 7 Hours

Even children who are in conflict with the law have some basic rights, which should be upheld by the State. This Module will try to identify the scope and limitations of these rights enjoyed by the children. Also, this Module will discuss the nature of these rights i.e., whether all these rights are merely procedural in nature or substantive in their application.

- Determination of age
- Evolving concept of diversion

Questions to answer:

After going through this Module, one would be able to answer the following -

1. What are the rights of the child (in conflict with the law) at the time of apprehension?
2. Does such a child have a right to bail under the prevalent law?
3. What are the rights of such a child during the continuance of the legal proceedings?
4. Does such a child have a right of appeal?
5. Is there a right to access alternative disposition measures guaranteed under the Juvenile Justice Act, 2015?

C) Children in need of care and protection – 7 Hours

A child is often forced to commit crime due to various external factors – such as homelessness, extreme poverty, starvation, being forced into labour etc. Many a time, these children have no recourse but to resort to committing crimes just to survive and fill their

stomachs. These children should be looked at with sympathy and there needs to be efforts made to rehabilitate and reintegrate these children into the society.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. Do the children in conflict with the law enjoy a right of rehabilitation and social reintegration?
2. What is the primary objective behind the rehabilitation and social reintegration of a child in conflict with the law?
3. How are children in conflict with the law rehabilitated and reintegrated with the society?
4. Which institutions are eligible to take in these children who are in conflict with the law?
5. Is a child accused of or convicted for committing a heinous offense treated the same way as other children who are in conflict with the law?
6. Are there facilities which can take in a child (in conflict with the law) temporarily in case of any emergency (for a specific purpose)?
7. What kind of life and what rights are enjoyed by the children in these rehabilitation institutions?

D. Offences against children – 6 Hours

Children are often victims of various crimes, be it in their household or at the hands of strangers. However, the Juvenile Justice Act, 2015, in law, has provisions prohibiting these offenses. The need of the hour is the strong implementation of these provisions and to redress the children who are the victims of these grave offenses.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. How is the offense of cruelty to children dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2015?
2. Does a child have a right against being used as a beggar, peddler, vendor or smuggler?

3. Can a person providing narcotic drug or psychotropic substance to a child be punished under Indian law?
4. Despite the legal provisions, do the above mentioned offenses happen frequently?
5. How can implementation of the rights of the child against such offenses be strengthened?

Cases in detail:

- Subramanian Swamy v Raju [(2014) 8 SCC 390]
- Ashwani Kumar Saxena v State of Madhya Pradesh[(2012) 9 SCC 750]

Legal provisions:

- Juvenile Justice (Care and Protection of Children) Act, 2015 - specifically
 - Sections 2, 3
 - Chapters IV, VI, VII, VIII, IX

Secondary Sources:

- Clayton A. Hartjen, Legal Change and Juvenile Justice in India 5 International Criminal Justice Review 1-16
- National Law University Odisha, Exploring Changing Dynamics of Children's Laws in India in Post-Liberalization Era (Indian Council of Social Science Research, New Delhi 2019) 111-148

MODULE III: A child's right against any form of economic exploitation – 7 Hours

Every country aspires to do away with 'child labour'. But, the ground reality is different. According to Census data, there are over 82 lakh child labourers (between 5 – 14 years) in India. This Module will deal with an analysis of the various international instruments as well as national legislations on the prohibition of child labour, finding their lacunas and giving suggestions on how to improve the situation.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. Which type of child labour is banned under international instruments and in India? Is there an age limit applicable?
2. Should the laws prohibiting child labour in India be strengthened?
3. What are the suggestions that we can recommend to deal with the implementation problem?
4. When a child is forced into labour, what other rights of his/her are violated?

Legal provisions:

- United Nations Convention on the Rights of the Child, 1989 Art 32
- Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
- The Constitution of India Art 24
- Child and Adolescent Labour (Prohibition and Regulation) Act, 1986
- United Nations Convention on the Rights of the Child, 1989 Art 31

Articles/Chapters:

- Yoshie Noguchi, 20 Years of the Convention on the Rights of the Child and International Action against Child Labour 18(4) International Journal of Children's Rights 515-534
- Yoshie Noguchi, ILO Convention No. 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child 10(4) International Journal of Children's Rights 355-370
- RajaniKanta Das, Child Labour in India: I 28(6) International Labour Review 796-832
- RajaniKanta Das, Child Labour in India: II 29(1) International Labour Review 43-83
- National Law University Odisha, Exploring Changing Dynamics of Children's Laws in India in Post-Liberalization Era (Indian Council of Social Science Research, New Delhi 2019) 111-148

MODULE IV: Sexual Offences against children – 7 Hours

- History
- How the POCSO Act came about?
- Salient features
- Issues and challenges
- Recent amendment

Legal instruments:

- Protection of Children from Sexual Offences Act, 2012
- Protection of Children from Sexual Offences (Amendment) Act, 2019

Judicial pronouncements:

- Nipun Saxena v Union of India [(2019) 2 SCC 703]
- Hari Dev Acharya @ Pranavanand v State [2021 SCC OnLine Del 4955]
- Attorney General for India v Satish [(2021) Bombay HC]
- Alakh Alok Srivastava v Union of [2018 (7) SCALE 88]
- Gaya Prasad Pal @ Mukesh v State [235 (2016) DLT 264]

MODULE V: A child's right to education – 7 Hours

Right to Education is provided under both the UNCRC as well as the Constitution of India. Further, a comprehensive statute has been enacted to address the issue of children's education in India. However, this right is not enjoyed by all the children of India. This Module will try to find the reason for this.

Questions to answer:

After going through this Module, one would be able to answer the following -

1. What is meant by 'free and compulsory education'?
2. Should countries be allowed to have a maximum age above which they are not obligated to provide free education to children?
3. Are programmes like SarvaSikshaAbhijaan effective?

4. What are the various factors that hinder the child from accessing educational facilities?
5. Should the law on education in India be modified or is there a need for better implementation?

Cases and Legal Provisions:

- Miss Mohini Jain v State of Karnataka [AIR 1992 SC 1858]
- Unni Krishnan v State of Andhra Pradesh [AIR 1993 SC 217]
- United Nations Convention on the Rights of the Child, 1989 Art 28, 29
- The Constitution of India Art 21-A, 45
- Right of Children to Free and Compulsory Education Act, 2009

Articles/Book Chapter/Other Document:

- Brookings Educational Report, A Global Compact on Learning 1-5, 30-41, 48-53
- Abhijit Banerjee and Esther Duflo, “Top of the Class” in Poor Economics (Public Affairs New York 2011) 71-101
- Elaine Unterhalter and Amy North, —Responding to the gender and education Millennium Development Goals in South Africa and Kenya: reflections on education rights, gender equality, capabilities and global justice (Institute of Education, University of London 21 June 2011)

MODULE VI: Conclusion with suggestions – 9 Hours

- A deliberation on ongoing curses:
 - Child marriage – From restraint to prohibition – Is the law enough? [amendment attempts]
 - Children and migration – the climate today
- Burning issues:
 - A child actor – why not considered a child labourer?
 - A growing child’s right to choice etc. – still ignored?

- Children and sexual orientation – still hidden in society’s milieu?
- Is the ‘rights based model’ the best method to uphold the children’s interest?
- How can we balance parents’ rights with children’s rights?
- Can we apply the Restorative Justice Model to situations of children’s rights violations in India?
- What is the role of a child and the specific concerns faced by him/her during COVID times?
- **Research in the area of Child Rights:**
 - Cindy Dell Clark, In a Younger Voice: Doing Child-Centered Qualitative Research (Oxford University Press New York 2011)
 - Melissa Freeman and Sandra Mathison, Researching Children’s Experiences (The Guilford Press New York 2009)
 - Sheila Greene and Diane Hogan (eds), Researching Children’s Experience: Methods and Approaches (Sage London 2005)

Key Cases

- Amit Singh v State of Uttar Pradesh [(2006) 9 SCC 522]
- Arnit Das v State of Bihar [(2000) 5 SCC 488]
- Ashwani Kumar Saxena v State of Madhya Pradesh[(2012) 9 SCC 750]
- Avinash Mehrotra v Union of India [(2009) 6 SCC 398]
- Babla Alias Dinesh v State of Uttarakhand [(2012) 11 SCC 306]
- Bhim @ Uttam Ghosh v State of West Bengal [(2010) 14 SCC 571]
- Dharambir v State (NCT of Delhi) [(2010) 5 SCC 344]
- Hari Ram v State of Rajasthan [(2009) 13 SCC 211]
- Jarnail Singh v State of Haryana [(2013) 7 SCC 263]
- Jitendra Singh @ Babboo Singh v State of Uttar Pradesh [(2013) 11 SCC193]

- Ketankumar Gopalbhai Tandel v State of Gujarat [(2014) 12 SCC 341]
- M.C. Mehta v State of Tamil Nadu [AIR 1991 SC 417]
- Miss Mohini Jain v State of Karnataka [AIR 1992 SC 1858]
- Mukarrab v State of Uttar Pradesh [AIR 2016 (SC) 2418]
- Mumtaz v State of Uttar [(2015) 4 SCC 318]
- Om Prakash v State of Rajasthan [(2012) 5 SCC 201]
- Ravinder Singh Gorkhi v State of Uttar Pradesh [(2006) 5SCC 584]
- Salil Bali v Union of India [(2013) 7 SCC 705]
- Sampurna Behura v Union of India [(2018) 4 SCC 433]
- Shah Nawaz v State of Uttar Pradesh [(2011) 13 SCC 751]
- Shiela Barse v Union of India [AIR 1986 SC 1773]
- Subramanian Swamy v Raju [(2014) 8 SCC 390]
- Unni Krishnan v State of Andhra Pradesh [AIR 1993 SC 217]
- Vikram Singh v State of Haryana [(2009) 13 SCC 645]

Re-useable E-content

- http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000032SW/P001728/M021602/ET/15015795221SocialWorkwithChildren_Scopeandskills_PartIII.pdf
- http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000032SW/P001715/M021090/ET/1500467862CHILDANDTHELAW-PARTII-TEXT.pdf
- http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001741/M022116/ET/1504181842et.pdf
- http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/social_work_education/social_work_with_children_and_child_protection/01._evolution_of_child_rights_in_india/et/6082_et_et.pdf
- <https://www.coursera.org/lecture/childrens-rights/1-2-the-united-nations-convention-on-the-rights-of-the-child-from-drafting-to-dpaUJ>

- <https://www.youtube.com/watch?v=A-aZj5wDug4>
- <https://www.youtube.com/watch?v=IEC28YBCK9Q>

COURSE EVALUATION METHOD

MID-SEMESTER EXAM	25
END-SEMESTER EXAM	45
PROJECT SUBMISSION	20
VIVA VOCE	10
TOTAL	100