

Child Right Provisions in Russian Constitution: An Analysis through the Lens of Child Centric Perspective

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ABSTRACT

Historically, children have been viewed as non-persons or properties of the parents; however, the advent of industrialization and subsequent reform movements led to the recognition of children as autonomous individuals with comprehensive rights. This paper examines the constitutional provisions of Russia related to children's rights from child centric perspective. The recognition of children as autonomous beings with agency and voice is the major underpinning behind such advocacy. Though Russia ratified the UNCRC, the constitutional recognition of children as independent right-holders remains limited and is obscured by the language of paternalism that prioritises protection over autonomy. The study deconstructs the constitutional texts and evaluate the visibility of child rights within the constitutional framework. The study, also compares the approach of constitutions of other countries while discussing its major advocacy. Thus, the paper calls for employing right-based language, asserting child's agency and visibility in the legal framework without subsuming it under other broad provisions, to reform the normative way of addressing the rights and entitlements of children. This approach, further aligns with the international standards set by the UNCRC and is integral for ensuring children's rights and their wellbeing within a progressive framework.

KEYWORDS: *child rights, Russian constitution, UNCRC, child centric perspective*

INTRODUCTION

The rights of children in a constitutional framework are of immense significance for legal discourse and social governance. These are rudimentary in shaping the foundational safeguards for protection, welfare, and development of children within a specific socio-political milieu. Embedded within the constitutional law these rights delineate the fundamental entitlements accorded to children encompassing civil, political, social, economic, and cultural aspects. The core of these constitutional guarantees upholds, recognition of children as justified right-holders, endowed with voice and agency. The emergence of the child rights in the public and political discourse does not have a long history (Stearns, 2017). For centuries they are treated and viewed as non-persons, property, and responsibility of parents (Aries, 1962). The beginning of industrialisation has witnessed the emergence of the discussion on the state

responsibility towards children. Since then, children and their rights deserved a distinct place in public discussion as it contributes towards the nation building and wellbeing of the society. Thus, the constitutional provisions for children's rights marks a historical step in the representation of children as a unique social category having equal importance as adults. These legal entitlements not only provide for legal and institutional mechanism but also cements social commitment for fostering the wellbeing of children.

Objectives

- To examine the provisions of Russian Constitution through the lens of child centric perspective.
- To advocate the agency of children through legal entitlements in the context of Russian Federation.

How to cite this paper: Dr. Kirtimayee Routraya "Child Right Provisions in Russian Constitution: An Analysis through the Lens of Child Centric Perspective"

Published in
International Journal
of Trend in
Scientific Research
and Development
(ijtsrd), ISSN: 2456-
6470, Volume-8 |

Issue-2, April 2024, pp.549-553, URL:
www.ijtsrd.com/papers/ijtsrd64717.pdf



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Research Methodology

This study is qualitative and analytical in nature. It involves a qualitative analysis of Russian Constitution, deconstructing of the constitutional texts and language to reveal ambiguities, complexities, and underlying power dynamics, review of international norms and treaties like UNCRC, to assess how child rights are represented and prioritised. The provisions of Russian Constitution are compared with other constitutions to highlight variances in legal commitment to child rights, gaps, and potential areas of reform. The study is framed within the theoretical construct of child's agency and child centric approach to constitutional rights. Child's agency views children as autonomous 'beings' with capacities and rights, which challenges traditional notion of children as passive subjects of adult decisions (James and Prout, 1997). The child centric approach to constitution stresses on prioritizing the child's perspective and interest, and acknowledges them as independent right holders (Archard, 2004). Such advocacy stands in sharp contrast with the paternalistic approach which undermine children's autonomy and competencies at various developmental stages (Tobin, 2005; Freeman, 2007).

Child Centric Perspective towards Constitutional Provisions

The visibility of children and rights of children in the constitution and major legislations may vary from each country to the other considering the typical circumstances, cultural contexts, availability of resources, historical events, and political dynamics. Though, most of the nations of the world have ratified the United Nations Convention on the Rights of Children, the way these nations follow the standard set by the international norms will differ from case to case. In the constitution and major legal enactments of a country the rights concerning children may find better visibility with "dedicated, detailed provisions setting out the constitutional rights of children and the duties that the state has to vindicate such rights" (O'Mahony 2019). There are cases where children's rights can be said to be invisible in the constitutions or there are constitutions with limited reference to children, with discrete provisions addressing specific issues that concern children. Thus, it is important to examine, how the Constitution of Russian Federation informs the rights of children through its provisions.

The child centric perspective towards children's rights invokes the principle of *agency* of the child which views child as 'being' rather than a 'becoming adult'. It proposes a stand which is against the traditional notion of seeing child as a person lacking in rational capacity. It sees children as autonomous

individual agents. Finland Constitution can be cited as reference in this context which states, "Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development." It must be noted that the authorities and legal entities and society need to be progressive in accepting and interpreting the laws of child centric constitutional provisions.

The constitutional law when focuses on the child as objects requiring protection of the law but does not approach children or their concern by accepting them as independent right holders, then the approach is paternalistic. The paternalistic approach uses the 'special protection' language for safeguarding them from harm (Tobin 2005). The constitution does not explicitly acknowledge children as independent right holders and they does not appear too frequently in the text. The capacity of the child to deal with a situation as autonomous individuals is not recognised by the constitution beyond the need of protection. The paternalistic approach rarely uses the language of rights and categorise children along with other vulnerable groups (O'Mahony 2019). In this context Croatian Constitution can be cited, which upholds the similar stand which is devoid of the language of children's rights. For example, under article 62 it is mentioned that "Everyone shall have the duty to protect children and helpless persons". O'mahony (2019) notes that the Russian Federation implements a strategy in which "childhood" is prioritised over seeing children as autonomous human beings. The perspective of child rights in the constitution is hampered by the adoption of a more paternalistic language.

Child Right Provisions in Russian Constitution and Child Centric Perspective: An Analysis

Russia ratified the United Nations Convention on the Rights of Child (1989) on June 13, 1990 and it came into force since September 15, 1990. It was among the early signatories of the Convention. The Constitution of Russian Federation came into force on 25, December 1993. The Constitution uses the term 'children' and 'childhood' in its provisions. While the term 'childhood' appeared three times, the term 'children' appears four times in the main text under articles. This signifies its emphasis on the phase of the person's life which needs nurturing, care, and support. Under article 7 of the Constitution which enshrines the socialist state and its policies for 'dignified life and free development of the human being' also includes the provision of 'state support' for "family, motherhood, fatherhood, and childhood" and for the disabled and elderly citizens. This

expresses state's concern for childhood as a distinctive phase of human life which needs equal attention like that of motherhood and fatherhood. The support from the state can be viewed as state's recognition for childhood needs which demands and deserves support and protection by the state. The guarantee for social welfare support is further provided for upbringing of children under the Article 39, which states that "*Everyone is guaranteed social welfare support in old age, in case of illness, disability, loss of breadwinner, for upbringing of children and in other cases stipulated in law*". Thus, state share the burden of upbringing of children through social support and regards 'upbringing' as an area deserving the welfare support and affirmative action from the state.

The similar conceptualisation is reiterated in the article 38 of the Constitution, which states, "Motherhood and childhood, the family are under state protection". The next mention of 'childhood' appears under the article 72 of the Constitution. The provision under the article is related to the joint jurisdiction of the Russian Federation and of the constituent entities which states under 72(g) that "*coordination of health care issues, protection of family, motherhood, fatherhood and childhood; social protection, including social welfare*". Thus, together the constituent entities and the centre will implement, participate, and cooperate on providing social protection to 'childhood'. Here the reference to childhood is not mentioned separately rather it is also mentioned and clubbed together with family, motherhood, and fatherhood like it is done earlier. Under article 38, the Constitution stipulates that "*care for children and their upbringing is the equal right and duty of the parents*". This provision makes parenting of children a right for parents equally applicable to both the spouses and makes it a duty and obliges the parents to deliver the responsibility towards upbringing of children. This provision can be said to be focused on the issue of children without intermixing it with any allied area of concern which imply that upbringing of children is given priority. At the same time, it must be noted that the Constitution emphasises the 'need' for care and upbringing for the child and secures the parental obligation towards it. Article 38 also mentions the responsibility of children who are employable and have reached the 18 years of age have the duty towards the non-employable parents.

The Constitution also mentions parental obligation for securing basic education of the child under Article 43. It states, "*basic general education is obligatory. Parents or persons substituting for them ensure basic*

general education of their children". The Article states that "*Everyone has the right to education*". Though this right does not specifically mention it to be the rights of children but it is meant for children. This article further provides accessibility to free of cost education in the "*preschool, basic general and secondary vocational education in the state and municipal education institutions*". It should be noted that while other provisions relating children focus on the 'need' of the child and thereby the welfare support provisions, Article 43 of the Constitution, explicitly and vividly pronounce 'education' as a right for everyone including children. Employing the term 'right' in the provision is emblematic of the intrinsic value ascribed to education underscored by a cognizance of entitlement emanating from state.

Right to education is one of the fundamental rights for children. The history of children's rights movement shows how through right to education the rights of the children are incorporated in the Constitutional law in the initial years of struggle. In certain instances, the constitutional frameworks only delineate children's rights through the prism of 'right to education'. The presence of right to education in the constitutional provisions makes it a potential instrument for advancing the agenda for children's rights as it can be claimed through the legal process. This is significant because right to education is a prerequisite for development of the children and fully harnessing of the potential of children. Within the Russian Constitution, this right does not explicitly encompass individual entitlement for receiving education. Instead, it articulates education as a universal right and describes it as an obligation of parents and guardians of the child. Still this right is significant in making children visible in the text of the constitutional law in Russia. Most of the states contain the provision for education in the constitutional law e. g. India, Luxembourg, Netherlands.

Under the Chapter Two i.e., *Human and Civil Rights and Freedoms* of the Constitution of Russian Federation, it is stated that "*Human and civil rights and freedoms are recognised and guaranteed in the Russian Federation in accordance with the universally recognised principles and norms of international law and in conformity with this Constitution. The basic human rights and freedoms are inalienable and belong to everyone from birth*". Though this provision makes generalist provisions for human rights it also implies the rights and freedom of the child since the time of its birth. The rights of child even before the birth is consistent with the provisions of motherhood and its protection by the state.

Moreover, the recognition of international norms in the sphere of human rights is also recognised by the Constitution making the ratification and enforcement of international conventions and treaties consistent with the provision of Constitution (Article 17). Thus, it can be concluded that the rights of children and children are not invisible in the codification of the Constitution of Russian Federation. Though the visibility cannot be said to be vivid and dominant. The constitutional provisions cannot be said to be blind to children and their rights in comparison with the rights of others. It is to be noted that the Constitution of Russian Federation does not incorporate any rights of the child which is not justiciable. The example of Irish Constitution can be cited here, which includes the care for orphans and prevention of economic exploitation of children under the “Directive Principles of State Policy” which are not enforceable.

It is to be noted there is no other specific provision is mentioned in the constitution of Russian Federation related specifically with children, though there are many rights which are pronounced as the rights of citizens in generalist manner. For instance, equality before law and principle of non-discrimination are enshrined under article 19 of the constitution, but there is no mention of constitutional provisions in relation to the equal treatment of all children or prohibition of discrimination among children or between children or between adults and children.

The Constitution of Russian Federation, makes “a subsection of a general provision on the family that guarantees special state protection to parents and children” (O’Mahony 2019). This approach can also be noticed in Estonia, Italy, Lithuania (ibid). There is a dedicated section entirely for children or detailed part devoted to specific issues of children under some broad themes like family. There is no detailed children’s rights provision or explicit statement and use of the term ‘right’ in the provisions of the Constitution of Russian Federation. There has been no mention to prevention of abuse, violence, exploitation specific to children. For instance, the Indian Constitution under its article 24 enshrines the fundamental right which prohibits employment of children below the age of 14 years, in any hazardous industry, factory or mines.

Article 7 of the Constitution of Russia seeks ensuring “*dignified life and free development of human being*” which is the incorporation of the right to life survival and development. But these are not mentioned specifically in the context of children like in the case of the constitution of Portugal under Article 69(1) or the constitution of Switzerland under Article 11(1).

The principle of non-discrimination is mentioned in the constitution though not exclusively related to children rather in a generalist way. The provision for respect for child’s view is not reflected in the provisions of Constitution of Russia unlike the Constitutions of Australia, Ireland, or Norway. *The best principle* concept is also not included in the constitution of Russian Federation. UNCRC asserts that children should not be treated or conceived as ‘objects’ in need of assistance rather as right holders. This essentially makes the right to be heard and right to participation in all decisions that impacts their life. It is a significant one in realisation of agency of children. Habashi et al. (2010) observes that the selective inclusion of protection provisions from UNCRC, while disregarding the domain of participation, reinforces perceptions of children as vulnerable and immature, rather than recognizing their capacity as potential decision makers.

Conclusion

As a state Russia values children as national assets and prioritises their well-being as evidenced from the policies and agenda of the government. But the fundamental law of the land excludes the semantics of a child centric approach in its codification, makes the child right concerns of the state ostensible. The rights of children must be included in a vivid and transparent way in the constitution of every state that wants to solidify its foundation of democracy and rule of law. Thus, while deconstructing the constitutional texts we can conclude that a child centric constitutional approach does not inform the social and political discourse embedded in the constitution. The Constitutional approach to children’s rights is more tilted towards paternalism and less towards child centric perspective and language. Nevertheless, it would be inaccurate to assert that children are entirely absent from the provisions of constitutional law. But steps must be taken to elevate their constitutional status as right bearers giving child rights due and distinct space in the constitutional frame, making their rights authentic and fundamental to the governance structure in a broad perspective. This will open the horizons for children’s autonomy, right to self-determination and participation, making the constitutional approach for child rights more authentic, solid and child centric in the social and political discourse of contemporary Russia.

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