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CHILD RIGHTS IN INDIA



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PREFACE

“Social Justice must begin with children. Unless a tender plant is properly tended and nourished, it has little chance of growing in to a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children”

Justice K. Subba Rao
(Former Chief Justice of India)

Children have the right to a joyful childhood. Every child has the right to grow up in a safe and nurturing environment with protection and guidance from their guardians. Whether in the cities or in villages, at home or in schools, a child is always a child and deserves a childhood free from exploitation and abuse. Yet millions of children are being robbed of their childhoods every day. With an officially estimated 12.7 million children engaged in hazardous occupations, India has the largest number of child labourers under the age of 14 in the world.

India became independent on 15th August 1947. Independence ushered in a new era for children. The historical process, and its social, economic and political priorities from mid-nineteenth to mid-twentieth century, paved the way for shaping a more coherent concept of childhood located within the family as the principal institutional influence and as the prime site for socialization. Further, it determined the nature of the relationship between the child, the family and the State and thus created the essential foundations of a national childhood for all children. Correspondingly, the Constitution of India, which came into force in January 1950, contains provisions for survival, development and protection of children. These are included both in Part III and Part IV of the Constitution pertaining to ‘Fundamental Rights’ and ‘Directive Principles of State Policy’. A list of major constitutional provisions relating to children is given in Box. Being one of the world’s largest democracy, India has a federal system of government, with the States having their own democratically elected governments. The relative jurisdiction of the Central and State Governments over different matters has been indicated

in the Seventh Schedule of the Constitution of India under the Union, State and Concurrent Lists. The survival, development and protection of children fall either in the Concurrent or in the State List. However, the implementation of schemes, including those of the Central Government, is carried out by the States. The 73rd and 74th constitutional amendments have recognized a third tier, below that of the State Government, viz., Panchayati Raj Institutions (PRIs), given them financial and administrative powers, and listed the subjects falling in their area of activities, a number of which relate to those services which have a direct bearing on children.

After analyzing of data the Author(s) tries to made an attempt to make recommendation that raising public awareness and participation along with meaningful and ethical child participation are essential before children in India can enjoy the rights already afforded them and provide the needed directions to the parents and Government about their responsibilities to guarantee the rights of the child and also to reduce the vulnerability of children in harmful situations

Finally, the study may suffer from some loopholes due to paucity of time and lack of adequate materials. Likewise, typing mistakes and omissions may crop up despite taking precautions for which I regret.

- **Authors**

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INTRODUCTION

Children are the future custodians of sovereignty, rule of law, - justice, liberty, equality, fraternity and finally international peace and security. They are the potential embodiment of our ideals, aspirations, ambitions, future hopes. They are the future shoulders in the form of great philosophers, rulers, scientists, politicians, able legislators, administrators, teachers, judges, technologists, industrialists, engineers, workers, planners on which the country would rest. Human Rights Instruments specific to the rights of the child: The Declaration of the Rights of the child 1924, adopted by the fifth assembly of the League of Nations, can be seen as the first international instrument dealing with children's rights. Children are a human resource, invaluable but vulnerable. Various laws in India, focusing on a position where children were treated as non-entity and where conscientious efforts have been made to not only make them free from exploitation and abuses but also enable them to develop their full potentiality with fair access to food, health, education and respect. The UN General Assembly adopted the Convention on the Rights of the Child which is the first international treaty that defines the basic rights of the children. A safe Childhood is a human right. They are recruited into armed forces. They are subjected to the death penalty, are disappeared, are punished by cruel and inhuman methods and suffer many other forms of violence.

India is a populous country and has the largest number of children in the world. India's heritage of a stable family life and traditional joint family system helped children grow into an atmosphere of warmth and affection into a secure future. However, with the changing socio-economic vertices enfeeble of the institution of joint family and resulting nuclearization of the families. Children were deprived of that enabling atmosphere and were propelled into an atmosphere where the parental care to the childhood started being shared with the institutions like school. In the rural set up too, there has been a trend towards the nuclearization undermining the emotional, psychological and the social support, which used to go into the child's upbringing. Besides, in the poorer families the children also started to share the burden of running the households. These children are deprived of both parental and institutional care, even where institutional care was available to the children; it was a very poor substitute to the parental care.

The concept of rights of the child though running in the socio-cultural spirit did not get explicit recognition less the wider acceptance of the society. The belief that children do have rights as adults, that they should participate in the decisions taken regarding their

lives, that they should be involved in these processes is yet to be internalized as a part of the value system. However, India is being projected as one of the leading developing nations, on the verge of becoming a developed country, but the progress on the rights of the child belies all these claims and achievements.

Every year 21 million children are born in India of whom 8 million die due to various infections and diseases. Nearly 13 million children are being added every year to the child population. The task of ensuring right to every child is enormous given the huge number of children in the country and it is multicultural and often diametrically opposed social ethos. While in the upper echelons of the society, the protectionism often leads to adults completely controlling the lives of the children and taking decisions on the part of the children and in the process depriving children of the opportunities to develop into a complete, independent, socially aware being. On the other hand, children in the poorer families end up sharing the burden of families' race up the social ladder, oblivious of the grotesque violations of the rights of the child.

Children are necessarily entitled to various specific provisions in India and across the world, but their proper implementation can only lead to their realization. The violation of rights of children can be seen in the form of abuse, trafficking, inadequate health facilities, malnutrition, and so on. The UN Convention on Child Rights led to development plans, strategies and various other programs to combat the violation of child rights.

A country like India, with the population level requires needs to pay more attention to enforcing all the legislations, policies, rules and regulations that come out as notifications, it also needs assessment from time-to-time. The country needs to interpret each section of an Act in its context and overcome its hurdles by finding means to provide equal access to education to all. Through affirmative action mandated by the constitution of India, we can hope to achieve all-round development. India, being a diverse country, improvement has always been unstable, and some areas have come up well in the development indicators while others are still staggering behind. More and more children are malnourished today, and these issues need to be addressed for a more comprehensive framework. As per 2011 census, the growth in the implementation of child rights in India is stunted.

According to the International Labour Organisation (ILO), a completely new generation of children is being deprived of the chance to take their rightful place in the society and economy of the 21st century. The ILO has proposed that 'child labour' will

disappear in a decade. But in reality the situation is alarming and in fact, one in every eight children in the world is exposed to the worst forms of child labour which endanger children's physical, mental health and moral well being. Though there are clear provisions in the Constitution of India to safeguard the interest of children by ensuring that they receive education and are not forced to work for a living, it is unfortunate that the problem of child labour exists at a large extent in India.

CHAPTER 2

RIGHTS OF CHILD UNDER THE INTERNATIONAL LAW

Introduction

International law is the set of rules, agreements, treaties and convention. Under the International law there are different provisions provided for the rights and benefits towards children. In this chapter the Investigator discussed about the rights of child under International law, which are the legal instruments of children to enjoy their proper rights and access to physical, mental, educational and healthcare facilities.

Children's rights law is often displayed and studied in isolation from the broader field of human rights law. The growth of children's rights as reflected in international and transnational law has converted into the post-war legal landscape. This overview describes some of the major global and regional legal instruments that have contributed to this transformation, as well as specific relevant provisions in broader human-rights related instruments and in international agreements on child protection and placement. The Universal Declaration of Human Rights, the United Nations has signified that childhood is entitled to special care and assistance.

Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights contains two articles that specifically refer to children. Article 25(2) states: "motherhood and childhood are entitled to special care and assistance. All children whether born in or out of wedlock shall enjoy the same social protection." Article 26 calls for the right to education for all, and deals with both access to and the aims of education. Thus, education is to be free, at least in the fundamental and elemental stages; elementary education is to be compulsory; and education should be "directed to the full development of the human personality and to the strengthening of respect for human rights and rudimentary freedoms." Nevertheless, "parents have a prior right to choose the type of education that shall be given to their children."

Declaration of the Rights of the Child 1959

The U.N. Declaration of the Rights of the Child (DRC) builds upon rights that had been set forth in a League of Nations Declaration of 1924. The Preamble notes that children need "special safeguards and care, including suitable legal protection, before as well as after birth," reiterates the 1924 Declaration's vow that "mankind owes to the child the best it has to give," and specifically calls upon discretionary organizations and local

authorities to endeavor for the observance of children's rights. One of the key principles in the DRC is that a child is to enjoy special protection as well as opportunities and facilities for healthy and normal physical, mental, moral, spiritual, and social development. The "paramount consideration" in enacting laws for this purpose is "the best interests of the child," a standard reverberated throughout legal instruments on children's rights. Among other DRC principles, a child is entitled to a name and nationality; to adequate nutrition, housing, recreation and medical services; to an education; and, for the handicapped, to "special treatment, education and care." Other principles are on protection against neglect, cruelty and exploitation, trafficking, underage labor, and discrimination.

U.N. Convention on the Rights of the Child 1989

The Convention on the Rights of the Child (CRC) is the most comprehensive document on the rights of children. Based purely on the number of essential rights it sets forth, as distinct from execution measures, it is the longest U.N. human rights treaty in force and unusual in that it not only addresses the granting and implementation of rights in peacetime, but also the treatment of children in situations of armed conflict. The CRC is also significant because it enshrines, "for the first time in binding international law, the principles upon which adoption is based, viewed from the child's viewpoint." The CRC is primarily concerned with four aspects of children's rights; viz. (1) participation by children in decisions affecting them; (2) protection of children against discrimination and all forms of neglect and exploitation; (3) prevention of harm to them and (4) provision of assistance to children for their basic needs. For the purposes of the CRC, a child is defined as "every human being below the age of eighteen years unless under the law applicable to the child, majority is achieved earlier".

International Covenant on Economic, Social and Cultural Rights 1966

The Preamble to the International Covenant on Economic, Social and Cultural Rights (ICESCR), as far as it recognizes the indivisibility of human rights, is applicable to children's rights as well. Thus, it notes that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" and that "these rights derive from the inherent dignity of the human person." "The widest possible shielding and assistance should be accorded to the family, particularly for its establishment and while it is in charge of the care and education of dependent children". It further stipulates that "special measures of protection and assistance" should be taken on behalf of the young without any discrimination; that they

should be protected from economic and social exploitation; that employing them in morally or medically harmful or dangerous work or in work likely to hamper their normal development should be punishable by law; and that age limits should be set below which the paid employment of child labor is prohibited and punishable by law. Article 12 addresses the right of all to “enjoyment of the highest attainable standard of physical and mental health,” to be fully realized by, among other measures, States Parties’ providing “for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”. The ICESCR also provides for the right of everyone to education and stipulates, “Primary education shall be compulsory and available free to all”.

International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political Rights (ICCPR) contains general provisions from which children are entitled to benefit as well as certain specific provisions on safeguards for children in the administration of justice and as members of a family unit. Thus, article 2 obliges States Parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the ICCPR, “without distinction of any kind;” to adopt laws to give effect to those rights; and to provide effective remedies where there are violations. Article 14(1) incorporates a more specific reference to rights of the young: “any judgment provided in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.” It further prescribes that every child must be registered immediately after birth and have a name and that every child has the right to acquire a nationality.

Convention on the Rights of the Child, 1990

The 112th Congress may demonstrate an interest in U.S. ratification of the United Nations (U.N.) Convention on the Rights of the Child (hereafter referred to as CRC or the Convention), particularly if the Barack Obama Administration submits it to the Senate for its advice and consent. CRC is an international treaty that addresses the rights of children worldwide. It calls on States Parties to take all appropriate measures to ensure that children receive special rights, including the right to a name and nationality; access to healthcare, education, and parental care; and protection from exploitation, abuse, and neglect. CRC entered into force on September 2, 1990, and 193 countries are currently party to the Convention, making it the most widely ratified human rights treaty. The United

States has signed, but not ratified, the Convention. One other country, Somalia, has not ratified CRC.

U.N. member states first accumulatively acknowledged the rights of children in the Universal Declaration of Human Rights, a non-binding decision adopted by the U.N. General Assembly in 1948. The Declaration states, "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." U.N. member states further enunciated children's rights by unanimously adopting the Declaration on the Rights of the Child in 1959. The Declaration, which incorporates language from the Universal Declaration of Human Rights, calls on governments, families, and individuals to ensure that all children enjoy certain rights, including proper legal protections, a name and nationality, access to healthcare, and protection from abuse and ill treatment. The international community also admitted the special rights of children in the International Covenant on Economic, Social, and Cultural Rights (CESCR) and the International Covenant on Civil and Political Rights (CCPR), which both entered into force in 1976. The probability of a Convention on the Rights of the Child was first hoisted by the government of Poland in 1978 as U.N. member states planned activities and programs that would take place during the International Year of the Child in 1979. For the next decade, U.N. member states participated in a U.N. Commission on Human Rights (now the Human Rights Council) working group to draft the CRC text. The Convention was adopted by the U.N. General Assembly after a decade of negotiations on November 20, 1989, and entered into force on September 2, 1990.

CRC defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." It states that the best interest of the child should be the primary consideration in all actions concerning children. Countries that are party to CRC agree to take all appropriate legislative, administrative, and other measures to ensure that all children in their jurisdiction have the rights set forth in the Convention. Such rights include life and development; name, nationality, and parental care; health and access to healthcare services; and education. They also include protection from abuse and neglect, and freedom of expression, religion, association, and peaceful assembly. CRC also calls for the protection of children from economic, sexual, and other forms of exploitation, torture, and capital punishment for offenses committed before the age of 18. It also provides special protections for orphans, refugees, and the disabled. Article 5 of CRC recognizes the role of parents, requiring that "States Parties shall respect

the responsibilities; rights and duties of parents to provide appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention." The Convention also states that children have the right to know and be cared for by their parents, and recognizes that the "rights and duties" of parents should be taken into account when States Parties seek to ensure a child's well-being.

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including suitable legal protection, before as well as after birth".

The Effectiveness of the Convention

A noteworthy area of debate among CRC supporters and opponents is the effectiveness of the Convention, particularly in countries that have already ratified it. Some critics agree with CRC's overall goal of protecting children's rights internationally, but they do not believe that the treaty is a successful mechanism for achieving this goal. As evidence of this, they emphasize those countries that many regard as abusers of children's rights—including Sudan, Democratic Republic of the Congo, and China—are party to the Convention. Similarly, some argue that instead of helping children, ratification of CRC may serve as a facade for governments those abuse children's rights. Critics have also declared that reservations and declarations that some countries devoted to the Convention are at odds with the purpose of the treaty possibly erode its intent and effectiveness. A number of Islamic countries, for example, attached reservations stating that the Convention would not apply to provisions that they deem irreconcilable with Islamic Shariat's law or values. Some are concerned that the ambivalence of such reservations could allow for broad explanation of the Convention's provisions, particularly in the area of child marriage and education for girls. Other States Parties also included reservations that aim to apply CRC only when it is congenial with domestic laws. Human Rights, for example, reports that many countries have used CRC as a basis for increasing existing legislation and improving children's rights. Similarly, a 2004 U.N. Children's Fund (UNICEF) review of 62 States Parties to CRC found that more than half of the countries studied had absorbed Convention provisions into their domestic laws, and nearly one-third of the countries had integrated provisions into their national constitutions. UNICEF also reports that CRC played a role in establishing over 60 independent human rights institutions for children in 38 countries. Ultimately, however, supporters generally acknowledge that while development has been made, many countries still have a long way to go in executing the Convention. The 2004

UNICEF review, for instance, found that while high-level political commitment to CRC is essential to developing new laws to protect children's rights, social change would happen only when high-level commitment is matched by "effective law enforcement, issuance of adequate resources and the engagement of all levels of society."

African Charter on the Rights and Welfare of the Child 1990

The African Charter on the Rights and Welfare of the Child (ACRWC), the first regional treaty on children's rights, builds on the 1979 Declaration on the Rights and Welfare of the African Child, but most of its provisions are duplicated after those of the CRC. "The main difference lies in the existence of provisions concerning children's duties , in line with the African Human Rights Charter" The Preamble states that "the child occupies a unique and privileged position in the African society" and requires legal protection as well as "particular care with regard to health, physical, mental, moral and social development." Special measures of protection are to be taken for handicapped children and children should enjoy physical, mental, and spiritual health. Children should also be protected against all forms of economic exploitation and from performing work likely to be hazardous and against all forms of torture, maltreatment, and abuse ; harmful social and cultural practices ; all forms of sexual exploitation or abuse; the use of narcotics and illicit drugs ; and abduction, sale, trafficking, and use in begging .

European Convention on the Exercise of Children's Rights 1996

The European Convention on the Exercise of Children's Rights (ECECR) stresses in the Preamble the aim of promoting the rights and "best interests" of children. children should have the chance to exercise their rights, particularly in family proceedings influencing them; they should be on condition with relevant information and their views should be given "due weight"; and, "where necessary," States as well as parents, should engage in the protection and promotion of those rights and best interests. The ECECR applies to children who have not reached the age of eighteen. The ECECR procedural rights include the child's right to be informed and to express his or her views in proceedings; the right to apply for the appointment of a special representative; and "other possible procedural rights," e.g., the right to apply to be assisted by a relevant person of their choice to help them express their views, the right to appoint their own characteristics, and the right to exercise some or all of the rights of parties to the proceedings.

European Convention on Human Rights 1950

The Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR), the first international human rights agreement to establish supervisory and enforcement machinery, obliges States Parties to “secure everyone within their jurisdiction” the rights and freedoms it sets forth (article 1). The ECHR uses throughout the term “everyone”, as a result, children have successfully brought suit either on their own behalf or as co-applicants with their parents. Specific references to the young are found in two articles of the ECHR and concern legal proceedings. Article 5(1) (d), on the lawful procedures for divesting a minor of his or her liberty, permits the lawful detention of a minor for the purpose of educational direction or for bringing him before the competent legal authority. Article 6(1) specified that everyone is entitled to a fair and public hearing and that judgment will be pronounced publicly, but the hearing may be held in private when required by the interests of juveniles or the protection of the parties’ private life. Protocol No. 7 to the ECHR provides that while spouses enjoy equality of rights and responsibilities in their relations with their children, this does not prevent States “from taking such measures as are necessary in the interests of the children” (article 5).

African Charter on Human and People’s Rights 1981 (Banjul Charter) and Protocol

The African Charter on Human and People’s Rights (hereinafter ACHPR) (also known as the Banjul Charter) encompasses civil and political as well as economic, social, and cultural rights. About children, it emphasizes the rights of the family and of duties towards the family preferably than the rights and duties of individual family members, which can be viewed as a mirroring of African customary law. Thus, the ACHPR makes it incumbent on the individual “to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need” (article 29(1)).

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa makes innumerable specific references to children and to girls in particular. The Preamble calls for the censure and elimination of “any practice that hinders or risks the normal growth and affects the physical, emotional and psychological development of women and girls.” States Parties are to approve and contrivance legislative measures to prohibit all forms of such harmful practices (article 2(1) (b); protect women and girls against rape and all other forms of violence, including trafficking; and “ensure that

in times of conflict and/or war, such acts are considered war crimes and are punished as such” (article 4(c) and (d)). States Parties should also condemn harmful practices such as medicalization of female genital mutilation and laceration that affect the fundamental human rights of women and girls and are contrary to recognized international standards, and take measures against them, such as rehabilitation of the victims and granting of asylum to those at risk (article 6(b-d)). States Parties should afford effective protection to women and children in emergency and conflict situations (article 11(4)) as well. In furtherance of the right to education and training, “all appropriate measures” should be taken to eliminate discrimination against women and girls, with specific positive action to be taken to promote girls’ education and training “at all levels and in all disciplines” as well as their retention in schools and other training institutions (article 12).

American Convention on Human Rights (Pact of San José, Costa Rica)

The American Convention on Human Rights (ACHR) obliges States Parties to respect the rights and freedoms accepted in its provisions and “to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. The term “person” used in the ACHR means “every human being” (article 1). Thus, every person has the right to a legal personality, to life, to humane treatment, to personal liberty, and to a fair trial, among many other rights set forth. However, parents or guardians “have the right to provide for the religious and significance education of their children or wards that is in grant with their own convictions” (article 12(4)), and “public entertainments may be subject by law to prior censorship for the sole purpose of synchronizing access to them for the moral protection of childhood and adolescence,” notwithstanding the right to freedom of thought and expression (article 13(4)). The ACHR stipulates that provision must be made for the protection of children “solely on the basis of their own best interests” when a marriage is dissolved and that equal rights must be recognized by law for children born in and out of wedlock (article 17(4) & (5)). Everyone also has the right to a given name and to the surnames of one or both parents (article 18).

Convention on the Elimination of all Forms of Discrimination against Women 1979

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been described as an international bill of rights for women. It defines what constitutes discrimination against women and establishes an agenda for States Parties to

act to end it. The Preamble, in invoking the Universal Declaration of Human Rights, notes its affirmation of the principle of the inadmissibility of discrimination and its proclamation on that all human beings are born free and equal in livelihood and rights and that everyone is allocated to all the rights and freedoms set forth therein, irrespective of any kind, including distinction based on sex. This kind of declaration forms the backdrop for certain rights set forth in CEDAW, even though girls specifically are mentioned only once: the obligation of States Parties to ensure the reduction of female student drop-out rates and the organization of programs for girls and women who have left school prematurely (article 10, in part). States Parties are also to take appropriate steps to alter the social and cultural patterns of conduct of men and women, with a view to achieving the excretion of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (article 5(a)). CEDAW refers to the interests of children being uppermost in relation to the common responsibility of men and women for their children's upbringing and development (article 5(b)) as well as in regard to States Parties' ensuring the same rights and responsibilities between men and women as parents in matters relating to their children and in matters of guardianship, wardship, trusteeship, and adoption of children (article 16 (1) (d) and (f)). CEDAW also prescribes betrothal and marriage of children and calls for action to specify a minimum age for marriage and to make marriage registration compulsory (article 16(2)).

Hague Convention on Jurisdiction, etc., for the Protection of Children 1996

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental control and Measures for the Protection of Children (1996 Convention) covers a wide range of civil child protection measures, "from orders concerning parental control and contact to public measures of protection or care, and from matters of representation to the protection of children's property." The Preamble confirms, "That the best interests of the child are to be a primary consideration." Article 2 stipulates that the Convention is appropriate "to children from the moment of their birth until they reach the age of 18 years." The 1996 Convention provides a structure to resolve disputes over contact and custody issues when parents are parted and living in different countries and has uniform rules to determine which country's authorities are competent to take the necessary protection measures. Provisions on identification and enforcement ensure that primacy be given to decisions taken by the authorities of the country where the

child has his or her habitual residence, reinforcing provisions of the 1980 Hague Convention. There are also provisions on cooperation procedures to better protect alone minors who cross borders and are in vulnerable situations and children placed in alternative care across frontiers. The latter includes arrangements such as foster care and the Islamic law institution of *Kafala*, a functional equivalent of adoption falling outside the scope of the 1993 Inter country Adoption Convention.

Hague Convention on Jurisdiction, etc., Relating to Adoptions 1965

The Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions (1965 Convention), the first Hague Convention on the issue, clearly has no contracting parties at present. The Convention is applicable “to all international adoptions, not only where a child originated from another country but also to adoptions where the only international aspect is the foreign nationality of the child.” It has been characterized as including four important provisions. The authorities are not to grant an adoption “unless it will be in the interest of the child.” The inquiry should be carried out “as far as possible in cooperation with public or private organizations qualified in the field of inter-country adoptions” and with the help of particularly trained or qualified social workers (article 6). Furthermore, the national law of the child is to be applied in decisions concerning to consent and consultation issues, rather than that of the adopter, family, or spouse. The 1965 Convention also allows States Parties to make a declaration at the time of signature, ratification, or accession but rescindable at any time, specifying provisions of domestic law prohibiting adoptions founded upon certain specified grounds, e.g., the existence of a previous adoption of the child or the age of the adopter and that of the child (article 13).

European Convention on the Adoption of Children 1967

The European Convention on the Adoption of Children (ECAC) applies to the legal adoption of children under the age of eighteen, not currently or previously married, and not judged in law to have come of age earlier. Its provisions are only minimum standards; States Parties may adopt provisions more commendable to the adopted child (article 16). The ECAC ensures that national child protection laws apply not only to adoptions of children from the States Parties, but also to those of children from other States. The essential provisions are on adoption practices that each Party should undertake to incorporate in national legislation. Under them, adoption must be granted by a judicial or

administrative authority in order to be valid (article 7) and the competent authority should not grant an adoption unless it “will be in the interest of the child” (article 8(1)).

Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors 1984

The Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (IAC) applies to the adoption of minors in the form of full adoption, adoptive legitimating, and “other similar institutions” when the residence of the adopter and the habitual residence of the adoptee are in different States Parties (article 1). Such adoptions are irrevocable (article 12). A State Party may declare that the IAC also applies to “any other form of international adoption of minors” (article 2), abrogation of such adoptions will be governed by the law of the adoptee’s habitual residence at the time of adoption (article 12). The IAC states that the law of the minor’s habitual residence also governs capacity, consent, and other requirements for adoption, as well as adoption procedures and formalities (article 3). The IAC protects the identity of the birth parents, with certain exceptions regarding medical data (article 7). The adoptee and the adopter (and the adopter’s family) generally have the same rights of succession as those of legitimate family members (article 11).

Hague Convention on the Protection of Children in Intercountry Adoption 1993

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (1993 Convention), has three stated aims: to establish safeguards to make sure that intercountry adoptions are in the best interest of the child and in accordance with the child’s fundamental rights; to establish a system of safeguards to avoid abuses such as trafficking in children; and to secure recognition in States Parties of adoptions made in accordance with the Convention (article 1). The underlying principle of the 1993 Convention is that “although it is difficult to define the best interests of the child, the child’s interests should always take priority over those of the prospective adopters,” but the application of this principle has proved troublesome. The 1993 Convention asserts that authorities must ensure, taking into account the age and degree of maturity of the child, that he or she has been counseled and informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required; that consideration has been given to the child’s wishes and opinions; that the child’s consent to the adoption has been given freely, in the required legal form, and in writing; and that consent has not been induced by payment or reimbursement of any kind (article 4(d)). Information on the

child's origin, in particular the identity of the parents as well as the medical history, should be preserved, but access by the child to that information is allowed only in so far as it is allowed by the law of the State where it is held (article 30). Personal data gathered or transmitted under the 1993 Convention's provisions is to be used "only for the purposes for which they were gathered or transmitted," without prejudice to article 30 (article 31).

Hague Convention on the Civil Aspects of International Child Abduction 1980

The Hague Convention on the Civil Aspects of International Child Abduction (1980 Convention) governs matter related to parental kidnapping or the removal of children under the age of sixteen across international borders and involving the jurisdiction of different countries' courts. Its stated objectives are to secure the prompt return of children wrongfully removed to or retained in any contracting state and to ensure that the rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states (article 1).

The European Convention Concerning the Custody of Children 1980

The European Convention on the Recognition and Enforcement of Decisions Concerning the Custody of Children (the Luxembourg Convention) seeks to protect the rights of custody and entrance to children in the international context. It calls upon the central authorities designated by States Parties to provide "free, prompt, non-bureaucratic assistance" in determining the whereabouts and reinstate custody of an improperly removed child. They must also avoid prejudice to the interests of the child or of the applicant in restoring child custody, among other requirements. Like the 1980 Convention, the Luxembourg Convention defines a child as being under the age of sixteen (article 1(a)). Also, under both instruments, the right of action lies with the custody holder. The Luxembourg Convention uses the term "improper removal" to refer to "the removal of a child across an international frontier in breach of a decision relating to his custody" given in a State Party and implementable in that State (article 1(d)), in contrast to the 1980 Convention's term "wrongful removal or retention" of a child and the CRC's term "the illicit transfer and non-return of children abroad" (article 11).

Worst Forms of Child Labour Convention 1999

The Worst Forms of Child Labour Convention (WFCLC) refers in the Preamble to the need to adopt new instruments for the prohibition and excretion of the worst forms of child labour, "to complement the Convention and the Recommendation Concerning minimum Age for Admission to Employment, 1973, which remain fundamental

instruments on child labour.” For the purposes of the WFCLC, the term “child” applies to all persons under the age of eighteen (article 2). The “worst forms of child labour” comprise:

- a) All forms of slavery or practices similar to it, such as the sale and trafficking of children and forced labor
- b) The use, procuring, or offering of a child for prostitution or for pornography or pornographic performances
- c) The use, procuring, or offering of a child for illicit activities such as drug trafficking; and
- d) Work that is likely to harm children’s health, safety, or morals (article 3). Each State Party is to adopt measures to prevent the engagement of children in the worst forms of child labor; to provide direct hand for the removal of children from such labor and for their healing and social integration; to ensure access to free basic education and, wherever possible and appropriate, to vocational training for all children removed from the worst forms of child labor, to recognize and reach out to children at special risk and to take account of the special situation of girls (article 7(2)).

Conclusion

It is to be submitted that children are as delicate as flower. World Health Organization (WHO) defines the meaning of children as the person until attaining the age of 18 years is to be considered as Child. To achieve and entertain various rights of child there are many conventions held where decisions were taken for the benefits of child. Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary shield and boosts so that it can fully assume its responsibilities within the community.

CHAPTER 3

RIGHTS OF CHILDREN UNDER THE CONSTITUTION OF INDIA

Introduction

Prior to the international conventions and resolutions, the Independent India has formulated in its Constitution, provisions for the welfare of the children. Before the adoption of the Indian Constitution itself, the Constitution of India Bill 1895(Home Rule Bill), Commonwealth of India Bill 1925 and the 'objective resolution' adopted by the Constituent Assembly on 22 January 1947 contained provisions meant for the protection of weaker sections. Starting from the preamble itself of the Constitution, the unequivocal intention of the State to assure protection to children can be seen, in either explicit or implied terms. The preamble declares the resolve that the state will secure to the entire citizenry, which comprises of children also social, economic and political justice, liberty of thought, expression, belief, faith and worship along with equality of status and opportunity. The concept of 'social justice' enshrined in the preamble can be interpreted as a compendium of diverse principles essential for the orderly growth and overall development of personality, which is the foundation of the human rights jurisprudence for children.

The Constitution, promulgated in 1950, encompasses most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy. Over the years, many individuals and public interest groups have approached the apex court for restitution of fundamental rights, including child rights. The Directive Principles of State Policy articulate social and economic rights that have been declared to be "fundamental in the governance of the country and the duty of the state to apply in making laws". The government has the flexibility to undertake appropriate legislative and administrative measures to ensure children's rights; no court can make the government ensure them, as these are essentially directives. These directives have enabled the judiciary to give some landmark judgments promoting children's rights, leading to Constitutional Amendments as is in the case of the 86th Amendment to the Constitution that made Right to Education a fundamental right.

Rights under the Constitution of India:

Children are right holders. They are entitled to support as right holders .The State and its government is obligated to realise the rights of children .All adults can play a role in achieving children's rights but state is the primary duty bearer . All rights are

common for adults and children. Some rights are defined specifically for children (hence UNCRC and also articles in the constitution and special laws). While all children have all rights, some children need special attention because of their situation.

The Constitution lays down the rules that the Government must follow to protect people from unjust action by the government. These are rights that the government cannot take away. Children have all rights as equal citizens of India, just as any other adult male or female. The Constitution of India also has special articles for children.

Fundamental Rights and Children

Fundamental means basic human rights. All rights that are basic to every human being is listed by the constitution under fundamental rights.

Right to Equality before Law

Article 14 of the Constitution of India provides right to equality and equal protection. Article 15 provides right against discrimination, however, as per Article 15(3) the state may make special provisions for children. It says that nothing in Article 15 shall prevent the state from making any special provisions for women and children. Women and children require special treatment on account of their very nature.

Right to be protected from Untouchability

Untouchability is abolished, and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable under the law. Article 17 prevents the practice of Untouchability in any form within the territory of India and the need for such a right was realized because children were subjected to brutal exploitation in the past.

Protection of certain rights regarding freedom of speech etc

Article 19(1) of the Indian Constitution provides for the protection of different freedoms of the citizens of India like the freedom of speech and expression, the freedom to form associations and assemblies, the freedom to move, reside and settle and the freedom to choose a profession. The other clauses of the same Article talks of how the State can impose reasonable restrictions on this Article. Children also, subject to specific conditions are entitled to Article 19 enshrined in the Constitution of India.

Right to Life and Liberty

Article 21 of the Constitution of India provides that “no person shall be deprived of his life or personal liberty except according to a procedure established by Law.” Article 21

of the Constitution of India states underlies the primary importance of early childhood developments and the right to food, nutrition and health are part and parcel of this right.

Right to Education

The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine. A series of decisions, including *Mohini Jain v. the State of Karnataka*, 1992, *Unnikrishnan v. State of A.P.*, 1993, culminated in converting a non-enforceable right to education in Directive Principles of State Policy into an enforceable Fundamental Right, leading to the incorporation of Article 21-A. In the judgement by the Supreme Court of India, the right to life of an individual is fully realised only when it is read with right to education and hence, it was added after Article 21 and was added to the Fundamental Rights and subsequently removed from the Directive Principles of State Policy.

Prohibition of traffic in human beings and forced labour

Traffic in human beings and beggar and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable per law. Nothing in this article shall prevent the State from imposing compulsory service for a public purpose, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. This right provided under the Fundamental Rights can also be read with the Right against Exploitation under Article 17 of the Indian Constitution and is a vital provision in protecting the rights of children.

Prohibition of employment of children in factories, etc.

Article 24 of the Constitution of India provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

Directive Principles of State Policy and Child Rights

Article 39(e) and (f) provides that the State shall, in particular, direct its policy towards securing to "ensure that the health and strength of workers, men and women and the tender age of children are not abused" and "that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "the children are

given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and that the childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 in explicit terms directs the State to endeavour to provide free and compulsory education for all children until they complete the age of 14 years, within a period of 10 years from the commencement of the constitution. This direction reflects the interest of the framers of the constitution as regards the education of the children as education is the foundation for a healthy and proper development of a child. The State's responsibility is to provide for just and humane conditions of work and maternity relief, also ultimately aims at the well-being of children.

Article 46 stands for the promotion of the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes and for their protection from social injustice and all forms of exploitation.

Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Article 51 helps us to have our fundamental rights and it helps us to get our rights in any situation. Right to freedom, equality, education, religion, vote, constitutional remedies and right against exploitation comes under the fundamental rights.

Article 51(A)(k) provides that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. India adopted a National Policy for Children in 1974, declaring children to be the most precious asset. In the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992 keeping in mind some goals and subsequently in the same year ratified Conventions on the Rights of the Child (CRC). The 86th Amendment to the Constitution, on the Fundamental Right to Education for the 6 to 14 years age group, has also led to the inclusion of an additional clause under article 51A that imposes a fundamental duty upon parents or guardians to provide opportunities for education of their children/wards between the ages of 6 and 14 years.

The object of Directive Principles of State Policy explicit in all these provisions is 'to embody the concept of welfare state'. Though Article 37 emphatically says in its first part that the rights contained in Part IV are not enforceable in any court nor their alleged breach

by any law can be held to invalidate the law, the judicial wisdom has given more weight to the second portion of article 37, viz., “the principles therein laid down are nevertheless *fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*”

Writ Jurisdiction & Directive Principles

The Supreme Court of India in *Mohini Jain v. State of Karnataka*, has incorporated the directive principle in Article 45 into Article 21 so that writ jurisdiction can be invoked for the enforcement of the same. It was held that the ‘right to education’ being concomitant to the fundamental right to life, the State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the children. Again in the famous case of *Unnikrishnan*, the apex court reiterated the same right; but limited the liability of state obligation in Article 45 incorporated by judicial interpretation into Article 21, towards every citizen until he completes the age of 14 years and beyond that stage, the state obligation to provide education is subject to the limits of the economic capacity and development of the state.

In yet another case, *M.C.Mehta v. State of Tamilnadu* the petition filed in the interest of child labourers sought the attention of the apex court towards gross violations of the fundamental rights of children employed in the *Sivakasi* area of Tamil Nadu and the judiciary has analysed the provisions contained in Articles 39(f) and 45 of the Constitution. The court thus, by extending the scope of fundamental rights, brought the directives also amenable to writ jurisdiction. Although the petition concerns only the child labour prevailing in the State of Tamilnadu, particularly in the *Sivakasi* area, the Hon’ble Court, taking into account, several factors, reports of the Government and reports of National Sample Survey Organisation, Planning Commission and other international bodies like UNICEF, was convinced that the problem of child labour has become an all India evil and is on the rise. The court held:

“...Child labour by now is an all-India evil though its acuteness differs from area to area. So without a concerted effort, both of the Central Government and various State Governments, this ignobility would not get wiped out. ...So we would address ourselves as to how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India.... Poverty is the basic reason which compels parents of a child, despite their unwillingness, to get it employed...Feeling that the problem would be taken care of to some extent by

insisting on compulsory education, the court is of the view that if employment of a child below that age of 14 is a constitutional indication in so far as work in any factory or mine or engagement in other hazardous work and if it has to be seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter a vocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intent behind the enactment of Child Labour(Prohibition and Regulation) Act, 1986.”

Other Rights under the Constitution of India

Children in India are also entitled to other rights like, Right Protection against arrest and detention, freedom of Conscience and practice of Religion, freedom to manage religious affairs, freedom to promote religion, freedom of religious instruction, protection of Rights of Minorities, including the Right to conserve language, script and culture and facilities for instruction in mother-tongue at primary stage under Article 350, and The Right to move the Supreme Court for enforcement of rights (Article 32) popularly known as Right to Constitutional Remedies. Besides, children also have the following rights as equal to citizens of India, just as any other adult male or female-

- Right to equality (Article 14)
- Right against discrimination (Article 15)
- Right to personal liberty and due process of law (Article 21)
- Right to being protected from being trafficked and forced into bonded labour (Article 23)
- Right of minorities for protection of their interests (Article 29)
- Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46)
- Right to nutrition and standard of living and improved public health (Article 47)

The Supreme Court in *English Medium Students Parents Association v. State of Karnataka*, highlighted the importance of mother tongue for children in their school education. The Court held: “All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is a great

reason and justice behind this. Where the tender minds of the children are subject to an alien medium, the learning process becomes unnatural. It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and tortuous. The basic knowledge can easily be garnered through the mother-tongue. The introduction of a foreign language tends to threaten to dwindle the development of mother-tongue.”

The High Court of Karnataka in *General Secretary, Linguistic Minorities Protection Committee v. State of Karnataka*, held that Article 45 read with Article 350A indicates that the Constitution does not empower the State Government to thrust the language of the majority as the medium of instruction for children belonging to the linguistic minority groups at the primary stage of education. Specific care is required to be taken to ensure that such children are, at their primary stage of their education, taught in their mother-tongue. So, under Article 29(1) of the Constitution, it seems that it is the fundamental right of the linguistic minority to conserve its own language and Article 350A of Indian Constitution directs every State to provide adequate facilities at the primary stage for education belonging to such linguistic minority community.

Welfare of Children under National Policies of India

Children have been subject of almost every Indian National Policy enacted for the welfare and protection of children since independence.

Some provisions relating to welfare of children contained under various national policies which are given under following heads.

The National Policy for Children, 1974

India is one of the very few States that has a written National Policy for Children. The Policy declares the nation’s children as a supremely important asset and states that children’s programme should find a prominent place in our national plans for the development of human resources. Some of the salient features of the National Policy for Children, 1974 are as follows:-

A comprehensive health programme covering all children including the care, nutrition and nutrition education of expectant and nursing mothers. Free and compulsory education will be provided to all children up to the age of fourteen years by the State. Special backing given to the children of weaker sections of the society, such as SC’s/ST’s and economic weaker sections, both in urban and rural areas. Furnishing special education, training and rehabilitation for socially handicapped children, delinquent

children, child beggars or those who are mentally distressed to help them to become a useful citizen of the country. Given special protection to the below 14 years of children and protect them from neglect, cruelty and exploitation, Prohibited children from being engaged in any hazardous occupation or in any kind of heavy work. Treatment, education and rehabilitation are also to be provided to children who are physically handicapped, emotionally disturbed or mentally retarded. Children are to be given priority for protection and relief in the times of distress or natural calamity. It seems that amendment to be made existing laws so that in all legal disputes the interests of children are given paramount consideration.

The National Policy on Child Labour, 1987

The National Child Labour Policy was formulated with the basic objective of rehabilitating the children withdrawn from the employment and to reduce the incidence of child labour. The policy was approved by the Union Cabinet on 14th August, 1987 during the Seventh Five Year Plan period. The Policy contains the action plan for confessing the problem of Child Labour. This Policy is listed in three parts namely: (i) A Legislative Action Plan; (ii) Focusing and Convergence of general development programmes for benefit of children and (iii) Project-based Plan of Action.

The National Charter for Children, 2003

The prime object of National Charter for children is to make security and safety for every child. It is the inherent right of every child to get a healthy and happy childhood, to eradicate the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the nation. Besides the rights consecrated in Part-III and IV of the Constitution of India, it also affirms that the best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs.

The National Plan of Action for Children, 2005

In order to reach the targets set by the Constitution of India and UN General Assembly the National Plan of Action for Children, 2005 had been introduced in the Parliament. The National Plan of Action for Children, 2005 itself to make commits sure all rights to all children upto the age of 18 years. The Government shall ensure all measures and a suitable environment for survival, growth, development and protection of all

children, so that each child can realize his or her inherent potentialities and grow up to be a healthy and productive citizen. This plan of action calls for collective commitment and action by all sectors and levels of governments and partnership with families, communities, voluntary sector, civil society and children themselves. Therefore, this plan is devoted to the children in the hope that it will provide a blueprint or road map for improvement in the lives of Indian children.

The National Policy for Children, 2012

This is second National Policy on Children after the 1974's policy. The National Policy for Children, 2012 affirms the commitment of State to the rights-based approach and to make certain that all children should grow in an environment with respect for their dignity and be freed from any kind of discrimination, violence, exploitation, exclusion and to have equal opportunities for developing their fullest potential. This policy is applicable to all children below 18 years of age.

Conclusion

From the above discussion it seems that Constitution of India provides different measures for the healthy physical and mental growth of children and provides many initiatives to let them live with dignity and respect and ensures all facilities to get them their basic rights. Yet not all the steps are still implemented in proper manner, still there are many drawbacks remain in the proper implementation of these provisions. There are some loopholes because of why still the children of India deprived of getting their basic rights.

CHAPTER 4

LEGISLATION ON CHILD RIGHTS

Introduction

Child protection is regarded as one of the main responsibility of the government as well as the society and considering the challenges and problems faced by the children. The question of child's rights has emerged as one of the most vibrant issues for discussion in this new millennium. The fact remains that even today children are a part of the disadvantaged minority group so far as realization of human rights and social justice are concerned. The main reason for this lacuna is that children are still not a complete political entity in true sense of the term. Besides, they are generally physically, mentally and economically defenseless. In this rapidly changing age of globalization, taking care of child's right at every stage has taken a back seat. This not only affects the whole value system, but also their present social and economic needs. No doubt that the future of humanity depends on children to a large extent, even then a very partial and parochial approach has been followed towards bringing them on the mainstream of social and political agenda. This marginalization takes even a much worse turn when child is either orphan, loner, a destitute, a homeless, a child labour, a bonded labour, a domestic help, a street child, a physically or a mentally challenged child. In such circumstances, they remain mostly in uncared state and became highly vulnerable to crimes which are perpetrated against them. Violations of Child Rights are hooked to social wrong. It ranges from actual crimes to neglect by society and unsatisfactory parenting, innocence, inexperience, wrong exposure, improper care, lack of good guidance and non-existence of good social security system are some of the major reasons for children's continued vulnerability and exploitation.

Child Related Legislation

While all children have equal rights, their situations are not uniform. At the same time, childhood and the range of children's needs and rights are one whole, and must be addressed holistically. A life-cycle approach must be maintained. Keeping this in mind, there are several national laws and policies that address the different age-groups and categories of children.

a) Guardians & Wards Act, 1890

Guardianship and Wards Act was enacted by Parliament in 1890 to protect the interests of minor and secure his property. A minor is a person who according to the provisions of Indian Majority Act, 1875 has not attained the age of majority i.e. he is less

than 18 years of age. Guardian means a person who has care of minor or minor's property or of both minor and his property. Guardian means a person who has care of minor or minor's property or of both minor and his property. A guardian can be appointed by court (in case of parents death or parents have abandoned their child) after following proper procedure in court of law or by way of will (testamentary guardian) where parents want someone to act as guardian of their children after their death. Under Guardianship and Wards Act 1890, District Court is authorized to appoint guardian if the natural guardian (the parents who give birth) or testamentary guardian fail to furnish/discharge their duties. Acc. to Sec. 7 of Guardianship and Wards Act 1890 court can make order to appoint guardian for the welfare of a minor or property or both. This section also authorizes court to remove any guardian who is neither appointed by way of will nor by court. Any person desirous of becoming or claiming to be, or friend or relative of minor or collector of district court or collector having authority with respect to class which minor belongs to. If the application is regarding the guardianship of person of minor then it is the district court of place where minor resides and if the application is regarding the guardianship of property of minor then it is the district court of place where minor resides or place where the property is. The court needs to look at the best interests and welfare of the minor. Also in addition to this they need to look at the age, religion and gender of minor and character and capacity of the guardian, his nearness to the minor, any existing or previous relations etc. When the minor whose father or mother is alive and who in opinion of the court are not unfit to be guardian. Also in case of minor who is married female and whose husband is not unfit to be guardian of her person. Guardian and minor have fiduciary relationship that is based on trust. If the court deems fit that in execution of duties of guardian he has to incur some pains and costs. The guardian needs to support the ward. He needs to look after the health, education and all the necessities in ward's life. Guardian of the property of ward should act very carefully like an ordinary prudent person would do in dealing with such property. He should be doing everything reasonably for protecting the property or benefitting the property. A guardian whether appointed by court or by way of will or any other instrument may be removed by court if the guardian has ill-treated the ward or he has failed to perform his duties or he has neglected to take proper care. Moreover, he can be removed if declared bankrupt and if he has interests which are adverse to the faithful performance of his duties.

The Personal Laws (Amendment) Act, 2010 has amended the Guardians ad Wards Act, 1890. Under Clause (b) section 19 of the Guardians and Wards Act, 1890, mother was not included as guardian along with father, but after 2010 amendment, mother was included along with father as guardian under the said Act for the purpose of removing the gender inequality.

b) The Child Marriage Restraints Act, 1929

The Child Marriage Restraint Act, 1929, passed on 28 September 1929, in the Imperial Legislative Council of India, this Act fixed the age of marriage for girls at 14 years and boys at 18 years, and later it was amended to 18 for girls, and 21 for boys. It is popularly known as the Sarda Act, after its sponsor Harbilas Sarda. It came into effect six months later on 1 April 1930 and applied to all of British India. It was a result of social reform movement in India. In spite of strong resistance from the British authorities, the British Indian Government had passed the legislation, which had a majority of Indians. However, it lacked implementation from the British Indian government, largely due to the fear of British authorities losing support from their loyal Hindu and Muslim communalist groups.

The Prohibition of Child Marriage (Amendment) Bill, 2021 was introduced in December, 2021. The bill amends the Prohibition of Child Marriage Act, 2006 to increase the minimum age of marriage for females. According to the Bill, a child is defined as “a male or female who has not completed 21 years of age.” The bill argues that the “highly pernicious practice of child marriage” continues despite the prohibition of Child Marriage Act, 2006. The bill proposes the raising of marriage age from 18 to 21 for girls. Moreover, under the 2006 Act, a person married below the minimum age may apply for annulment within two years of attaining majority (i.e. before 20 years of age). The Bill 2021 increases this to five years (i.e. 23 years of age).

The present status of the Bill is that the former Rajya Sabha Chairman M. Venkaiah Naidu has granted an extension to the Parliamentary Standing Committee on Education, Women, Children, Youth and Sports for the Prohibition of Child Marriage (Amendment) Bill, 2021.

c) The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960

An Act to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith. This Act may be called the Orphanages and other Charitable Homes (Supervision

and Control) Act, 1960. It extends to the whole of India except the State of Jammu and Kashmir. The State Government may, by notification in the Official Gazette, establish a Board of Control for the supervision and control of homes in the State. Provided that the term of office of a member elected under clause (a) or clause (b) of sub-section (2) of section 5, or of a member of Parliament nominated under clause (d) of sub-section (2) of section 5, shall come to an end as soon as he ceases to be a member of the House of the State Legislature which elected him, the managing committee or Parliament, as the case may be. A member may at any time resign his office by giving notice in writing to the State Government and on such resignation being notified in the Official Gazette by that Government, the seat of such member shall become vacant. A casual vacancy in the Board shall be filled by fresh election or nomination, as the case may be; and the term of office of a member elected or nominated to fill such vacancy shall be the remainder of the term of the member in whose place he is elected or nominated. Members of the Board shall be eligible for re-election or re-nomination. It shall be the duty of the Board to supervise and control generally all matters relating to the management of homes in accordance with the provisions of this Act; and exercise such other powers and perform such other functions as may be prescribed by or under this Act. Any member of the Board, or any officer of the Board authorised in writing by it in this behalf, by general or special order, may enter at all reasonable times any home for the purpose of ascertaining whether the provisions of this Act or of any rules, regulations, directions or orders thereunder are being complied with and may require the production, for his inspection, of any document, book, register or record kept therein and ask for any information relating to the working of the home. After the commencement of this Act, no person shall maintain or conduct any home except under, and in accordance with, the conditions of a certificate of recognition granted under this Act.

d) Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961, protects the employment of women during the time of maternity and entitles them to a full paid absence from work to take care for the child. The amendments in 2017 seeks to increase maternity leave period to 26 weeks in all establishments, including private sector.

The Maternity Benefit (Amendment) Act, 2017 No .6 Of 2017

The amendment extends the period of maternity leave from 12 to 26 weeks. However, this increase in maternity leave does not apply to women with two or more

surviving children. Such women will be entitled to 12 weeks of leave. The government has stated that the amendment extend the period of maternity leave to 26 weeks to ensure maternal care to the child during early childhood. It has also noted that such early care is essential for the growth and development of the child. This objective could be defeated if sufficient maternity leave is not given in the case of a third born child. Currently under the 1961 Act, the minimum maternity leave of 12 weeks applies in all cases, regardless of the number of previous children.

e) Child Labour Act, 1986

Employment of children below 14 and 15 years in certain prohibited employments have been prohibited by various acts but there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. There is also no law to regulate the working conditions of children in most of the employments where they are not prohibited from working and are working under exploitative conditions. Accordingly, it was decided to enact a comprehensive law on the subject. To achieve this objective the child labour (Prohibition and Regulation) Bill was introduced in the Parliament.

The Child Labour (Prohibition and Regulation) Bill, 1986 having been passed by both the houses of Parliament received the assent of the President on 23rd December, 1986. It came on the statute book as THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986 (61 of 1986) (came into force on 23/12/1986 and 26/5/1993).

Child Labour (Prohibition and Regulation) Amendment Rules, 2017

Government of India has notified the amendment in the Child Labour (Prohibition and Regulation) Central Rules after extensive consultation with the stakeholders. The Rules provide broad and specific framework for prevention, prohibition, rescue and rehabilitation of child and adolescent workers. It also clarifies on issues related with help in family and family enterprises and definition of family with respect to child, specific provisions have been incorporated in rules. Further it also provides for safeguards of artists which have been permitted to work under the Act, in terms of hours of hours of work and working conditions. The rules provide for specific provisions incorporating duties and responsibilities of enforcement agencies in order to ensure effective implementation and compliance of the provisions of the Act.

Platform for Effective Enforcement for No Child Labour (PENCIL) Portal 2017

It is an electronic platform that aims at involving Centre, State, District, Governments, civil society and the general public in achieving the target of child labour free society. It has been launched for the effective implementation of Child Labour Act and National Child Labour Project (NCLP) Scheme.

f) Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 with amendment 2002, aims to protect & promote breast feeding and proper use of infant foods. As per the WHO report, infants up to the age of 6 months should be fed only mother's milk, also continued breastfeeding with complimentary food up to the age of 2 years is the ideal diet for infants to attain best nourishment and growth. It is only the mother's milk, which to be fed to the infants up to the age of 6 months, and no milk substitute is a replacement for the same.

The prohibitions under the Infant milk Substitute Act are:-

- No person should advertise the distribution, sale or supply of infant milk substitutes or feeding bottles.
- No person should give an impression or create a belief that feeding of infant milk substitutes is equivalent to mother's milk.
- No person should take part in the promotion or sale of infant milk substitutes or feeding bottles or infant foods.
- No container or label shall have pictures of an infant or woman or both
- Infants milk substitutes shall not be displayed outside maternity and children Hospitals.

If any person is found involved with the promotion or advertising of infant milk substitute, he shall be punishable with imprisonment for a term which may extend to 3 years or a fine up to Rs 5000 or both. However if the Donation is made to the orphanage for any infant milk substitute it is not prohibited. As the orphanage infants do not have access to mother's milk hence such donation to orphanages are permitted.

The Infant milk Substitutes, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution) Amendment Act 2003:

The Government of India, recognizing the need to protect and promote breastfeeding and to protect expectant and nursing mothers from adverse influences undermining the practice of exclusive breastfeeding; has amended the IMS act 1992 to make it more effective and eliminate all possible loopholes in this act. The new act, 'The Infant milk Substitutes, Feeding Bottles and Infant Food (Regulation of Production, Supply and Distribution) Amendment Act 2003' was enacted on 2nd June 2003. In addition to the provision of the previous act prohibiting promotion of infant milk substitutes and feeding bottles, the modified act also prohibits promotion of these products on the pretext of distribution of educational or informational material.

g) Hindu Adoption and Maintenance Act, 1994

The Hindu Adoptions and Maintenance Act (HAMA) was enacted in India in 1956 as part of the Hindu Code Bills. The other legislations enacted during this time include the Hindu Marriage Act (1955), the Hindu Succession Act (1956), and the Hindu Minority and Guardianship Act (1956). All of these acts were put forth under the leadership of Jawaharlal Nehru, and were meant to codify and standardise the current Hindu legal tradition. The Adoptions and Maintenance Act of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, and with the legal obligations of a Hindu to provide "maintenance" to various family members including their wife or parents, and in-laws.

This act applies to Hindus and all those considered under the umbrella term of Hindus, which includes:

- a Hindu by religion in any of its forms or development;
- a Buddhist, Jain or Sikh;
- a child legitimate or illegitimate whose parents are Hindus, Buddhists, Jains or Sikhs;
- a child legitimate or illegitimate one of whose parents are Hindus, Buddhists, Jains or Sikhs and has been so brought up;
- an abandoned child, legitimate or illegitimate of unknown parentage brought up as a Hindu, Buddhist, etc.; and
- a convert to the Hindu, Buddhist, Jain or Sikh religion.

Persons who are Muslims, Christians, Parsis or Jews are excluded from this definition.

The act does not also apply to adoptions that took place prior to the date of enactment. However, it does apply to any marriage that has taken place before or after the Act had come into force and Moreover, if the wife is not a Hindu then the husband is not bound to provide maintenance for her under this Act under modern Hindu Law.

The Personal Laws (Amendment) Act 2010 has amended the Hindu Adoption and maintenance Act, 1956. Clause (c) of section 8 of the Hindu Adoption and Maintenance Act, 1956 incapacitates a married woman from taking in adoption merely on the basis of her marital status and it is discriminatory in nature. Therefore, section 8 has been amended to give similar right to a female Hindu, irrespective of her marital status, as that of a male Hindu.

h) Pre-natal Diagnostic Techniques Act, 1994

Discrimination against girl children led to abort the child before it is born. In comparison with girl child, the boy child is preferred since he will carry on the family name and pride, provides for the elders and is not a burden on the family at the time of marriage. In 1994 the Government of India in an attempt to stop female feticide passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.

The act firstly outlines provisions about the regulation of genetic counseling clinics, genetic laboratories and genetic clinics. All such diagnostics clinics have to be registered under this act, and all medical professionals employed for the act must have the appropriate qualification to conduct pre-natal diagnostic techniques. Determination of sex of the unborn by medical personnel or helping anyone is banned by the Act. In the year of 2002, the Act was amended and it came into force in 2003. Amendment of the Act mainly covered bringing the technique of preconception sex selection within the ambit of the Act, bringing ultrasound within its ambit, provisions for more stringent punishments for violation of any provisions under the Act etc.

i) Right to Education Act, 2009

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21(A) of the Indian Constitution.

This Act is an outcome of one of the landmark judgement of the Supreme Court of India in the case of *Unnikrishnan vs. State of Andhra Pradesh* (1993) ruled that the right to education is a fundamental right that flows from the right to life in Article 21 of the

Constitution. Following this ruling, the 86th Constitution Amendment Act, 2002 added Article 21A, stating, "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." The 86th Amendment also modified Article 45, which now reads as "The State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years". Key feature of the Act can be discussed as under:

- Every child between the age of 6 and 14 years has the right to full-time free and compulsory education in a neighbourhood school.
- Non-enrolled children of age group 7-9 years have the right to be admitted in an age-appropriate grade within one year of the commencement of the Act, and of age group 9-14 years have the right to be provided special programmes that will enable them to attend such grade within three years.
- Children with severe or profound disability, who are unable to attend a neighbourhood school, have the right to be provided education in an appropriate environment.
- A child cannot be held back in any grade or expelled from a school till Class VIII. Any expulsion requires an order of the School Management Committee (SMC), which will be given only after all other corrective measures have been exhausted, and parents/guardians have been heard. The local authority will take steps to enroll such a child in another neighbourhood school.

The State shall ensure availability of a neighbourhood school for every child within three years. In case of non-availability, free transport or free residential facilities shall be provided. The state/UT government shall determine every year the requirement of schools, facilities, and their locations; establish additional schools as required; deploy teachers and create facilities for their training. The State shall develop a mechanism to monitor enrolment, participation and attainment status of every child, and take corrective steps wherever required.

Right of Children to Free and Compulsory Education (Amendment Act) Act, 2019

There is "No Detention Policy" under the Right of Children to Free and Compulsory Education Act, 2009 which had been removed under The Right of Children to Free and Compulsory Education (Amendment) Act, 2019 by the following amendments :-

Substitution of new Section for Section 16 as it includes examination and holding back in certain cases. It states:

- 1) There shall be a regular examination in the fifth class and in the eighth class at the end of every academic year.
- 2) If a child fails in the examination referred to in sub-section (1), he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result.
- 3) The appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes, in such manner and subject to such conditions as may be prescribed, if he fails in the re-examination referred to in sub-section (2) :
- 4) Provided that the appropriate Government may decide not to hold back a child in any class till the completion of elementary education.
- 5) No child shall be expelled from a school till the completion of elementary education.

j) The Protection of Children from Sexual Offences (POCSO) Act, 2012

The Act seeks to protect children from offences such as sexual assault, sexual harassment, and pornography and other related offences. This law defines a child as any person below the age of 18 years

The Protection of Children from Sexual Offences (Amendment) Act, 2019 was passed to amend the Protection of Children from Sexual Offences Act, 2012. This amendment increases its ambit, to add more provisions. Some of the new clauses included: the definition of 'sexual Assault' has been extended to incorporate administration of hormones or chemical substances to children to attain early sexual maturity for the purpose of penetrative sexual assault. 'Aggravated sexual assault' includes cases where the offender is a relative of the child, or a person in a position of trust. People in positions of authority like police officers, members of armed forces, or public servants also fall within the ambit of this provision. The 2019 amendment seeks to enhance punishment for sexual offences against children, with a minimum of 20 years punishment and in exceptional cases the death penalty being introduced for aggravated penetrative sexual assault committed against children.

The Protection of Children from Sexual Offences Rules, 2020 have repealed Protection of Children from Sexual Offences Rules, 2012. The Central Government makes the Rules mainly on awareness generation and capacity building of children, procedure regarding care and protection of child, interpreters, translators, special educators, experts

and support person, medical aid and care, legal aid and assistance, compensation, special relief, monitoring of implementation of the Act etc.

k) The Immoral Traffic (Prevention) Act, 1956.

The Immoral Traffic (Prevention) Act, 1956 was amended firstly in 1978 and secondly in the year 1986 and lastly in the year 2006. Despite the above amendments, the Act could not achieve its purpose. Thus, with a view to focus on traffickers in the present scenario, the below mentioned bill has been drafted.

The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021

A large number of children are abducted every year of which a sizeable number remain untraced according to a report by the National Human Rights Commission of India. Although the Immoral Traffic (Prevention) Act, 1956 is in place to address the issue of human trafficking. The Act only refers to trafficking for prostitution, hence does not provide comprehensive protection for children. The Act also does not provide clear definition of “trafficking”. Thus, there is an imperative need to define trafficking and to enhance the punishment for the heinous offence to protect children and others against trafficking and the Immoral Traffic (Prevention) Amendment Bill has been introduced in 2018 which had special provisions for investigation of trafficking cases, definition of aggravated forms of trafficking, a rehabilitation fund, protective homes, and designated special courts. This draft of the bill was passed in the Lok Sabha in 2018 but was never introduced in the Rajya Sabha. Until a new anti-trafficking law is brought into place—a law with comprehensive identification and rescue measures, we are helplessly dependent on the Immoral Traffic (Prevention) Act, 1956 and IPC sections 370(trafficking of persons) and 370 A(exploitation of a trafficked person) .

The Union Ministry of Women and Child Development (WCD) has invited suggestions for the draft **Trafficking in persons (Prevention, Care and Rehabilitation) Bill, 2021**. The 2021 bill expands the scope to also include offences taking place outside India. According to the draft bill, the law will apply to all citizens of India, within and outside the country, persons on any ship or aircraft registered in India wherever it may be or carrying Indian citizens wherever they may be, and a foreign national or a stateless person who has residence in India.

The draft bill also says the law “shall apply to every offence of trafficking in persons with cross-border implications.” The draft bill also widens the definition of the “victim” by including transgenders, besides women and children. Once the bill becomes an Act, the

central government will notify and set up a National Anti Trafficking Committee, while state governments will set up these committees at state and district levels to ensure effective implementation.

1) Juvenile Justice Act 1986

It is an Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles. In the Juvenile Justice Act, 1986, the girls and boys were not referred to by uniform age, for boys it was 16 years and girls it was 18 years. The Juvenile Justice (Care and Protection of Children) Act, 2000 deals with three types of juvenile or children problems –i) juvenile in conflict with the law; ii) child in need of care and protection; and iii) rehabilitation and social reintegration of a child. The Juvenile Justice Act, 2015 replaced the Juvenile Justice (Care and Protection of Children), 2000 and this 2015 Act permits juveniles between the age group of 16-18 years to be tried as adults for heinous offences after preliminary assessment. Recently, the Juvenile Justice (Care and Protection of Children) Amendment act 2021 was passed to amend various provisions of the Juvenile Justice Act, 2015.

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

The Juvenile Justice (Care and Protection of Children) Amendment Act, 2021 received the assent of the President on 7th August 2021. But it is yet to be notified. The major aim of the amendment in this Act is to further fortify the implementation and monitoring mechanism under the existing Juvenile Justice (Care and Protection of Children) Act, 2015.

This amendment gives the power to District Magistrates, also including Additional District Magistrate to monitor and coordinate the functions of the agencies concerned with the implementation of the Act to ensure speedy trials and increased protection of children at the district level, with check and balances in place, but to also speed up the adoption processes in the country. According to the amendment, District Magistrates, including Additional District Magistrates, can now issue adoption orders under section 61 of the JJ Act, in order to ensure speedy disposal of cases and enhance accountability. Adoption processes were currently under the purview of courts, and with an overwhelming backlog, each adoption case could take years to be passed. This change will ensure that more orphans in need of homes, will be adopted faster. Any person aggrieved by an adoption order, may file an appeal before the divisional commissioner. According to critics, it does

not provide for judicial oversight at the appeal stage as well. Vesting of such core judicial functions with them may also raise concerns of separation of powers between the executive and the judiciary.

The District Magistrate have been further empowered under the Act to ensure its smooth implementation, as well as garner synergized efforts in favour of children in distress conditions. This means that DMs and ADMs will monitor the functioning of agencies in every district, this includes the Child Welfare Committees, the juvenile Justice Boards, the District Child Protection Units and the Special Juvenile Protection Units. The DM will also carry out background checks of CWC members, who are usually social welfare activists, including educational qualifications, as there is no such provision currently. The DMs are also to check possible criminal backgrounds to ensure that no cases of child abuse or child sexual abuse is found against any member before they are appointed. The CWCs are also to report regularly to the DMs on their activities in the districts. Thus the Amendment Act, 2021 empowers them to determine the cases of adoption that fall under the act along with introducing eligibility conditions for appointment of the members of the Child Welfare Committee.

The 2021 Act removes the earlier provision that there will be no appeal for any order made by a Child Welfare Committee that a person is not a child in need of care and protection. The Act provides that the Juvenile Justice Board will inquire about a child who is accused of a serious offence. Serious offences are those for which the punishment is imprisonment between three to seven years. But the 2021 Act adds that serious offences will also include offences for which maximum punishment is imprisonment of more than 7 years, and minimum punishment is not prescribed or is less than seven years. The Amendment Act provides that all offences under the Act will be tried in the Children's Court (equivalent to a Sessions Court). The Act provides that offences punishable with imprisonment between three to seven years will be non-cognizable and non-bailable.

This amendment has been brought in based on a report filed by the NCPDR in 2018-19 in which the over 7,000 Child Care Institutions were surveyed and found that 1.5 percent do not conform to rules and regulations of the JJ Act and 29 percent of them had major shortcomings in their management.

It further empowers them to determine the cases of adoption that fall under the act along with introducing eligibility conditions for appointment of the members of the Child Welfare Committee.

Conclusion

Child dependent, defenseless, impartial, innocent and vulnerable section of our society. They do not know that they have some separate rights and privileges that are given to them under different laws and legislation.

It seems that since the humanity developed, in many ways Children becomes victimized in different manner. Like child marriage which is a curse of our society, in different places in India child marriage is prevalent which is a main dominant factor of child from physically and mentally especially girl child. Likewise, child labour, child abduction, child sexual abuse etc.

To get rid of all these evil practices the Parliament has made several legislation and ensured rules and regulations for the sole benefit of children, which is discussed, in the above context.

It is to be submitted that under the shelter of the different perspective of the legislations made by the parliament it is some extent the deprived children are able to get their rights. They are entitled to live with dignity and peace, to nurture their childhood without fear, to culture their tender minds freely. These legislations are becomes the umbrella for the better livelihood of the children of our country who are the future endurance of our society.

In this context, it is hopeful that the concluding observations contained in this study may be of good use in building up the legal regime of child rights in India. After all good governance is the key to ensure child right.

CHAPTER 5

JUDICIAL APPROACH TOWARDS CHILD RIGHTS

Introduction

Judiciary is the backbone of smooth execution of system of a country. An independent and impartial judiciary is the first condition of liberty. It is safeguarded the rights of the citizen. Thus, the Constitution of India provides every possibility to the Supreme Court and the High Court has to make independent execution of the influence of the Executive. Even though the Constitution of India does not accept strict separation of powers, it provides for an independent judiciary with extensive jurisdiction over the acts of the legislature and the executive. The judiciary with its innovative and inspiring judgments has been substratum of social justice. The concept of social justice would remain a myth if protection could not be provided to children-the future of nation. The judiciary with its holistic, humanistic and child-friendly approach has always been in frontline with regard to protection of the child rights. The Investigator in this chapter tries to analyze the role of judiciary in protection of human rights of children.

The role of the India Judiciary and the scope of judicial interpretation have expanded remarkably in recent times, partly because of the immense growth of statutory intervention in the present era. The judiciary plays an important role in the protection of fundamental rights of the citizen and non-citizens alike.

The twin safeguards of equality before law and equal protection of laws are always plays a vital role as the most important pillars of human rights of the universe of freedom that is where ever freedom to assert human rights is recognized, whether under an unwritten or a written constitution. India is a sovereign, socialist, secular, democratic and republic country with a comprehensive charter of rights written into its constitution. India is the largest democracy in the world. The Constitution of India lays down base on which its foreign policy should be constructed and its international obligations respected. These bases are segmented principally in Article 51, which occurs in Part IV of the Indian Constitution.

It is always a question mark about the true nature and scope of the function of the court almost in all the countries regulated by written Constitution. Austinian Jurisprudence gives a very narrow view of the judicial function. Austin defined law as a command of the political sovereign and his sovereignty was indivisible and absolute, only the legislature

could make law. The function of the court was merely to declare the pre-existing law or to elucidate the statutory law. But on the other hand, the realist movement in the United State the latest branch of sociological Jurisprudence which concentrates on decisions of law courts. It is a submitted fact that law is what court says and the judges are the lawmakers. The entire common law is the creation of the English courts but is submitted on the myth that judge merely found law. Even with such negating perception of their own role, the English judges not only made law but also changed it to suit entirely new conditions created by the industrial revolution. In the recent past Judicial Activism come out as a tool for protection of children's rights which included protection from sexual exploitation, child trafficking, child abuse.

Child Labour and Right to Education

Economic and social development of a country is depends purely on the education of children-the future of country. It is the main instrument of building human capabilities and for opening opportunities. The importance of education was fully recognized by classical economist and social scientist such as Adam Smith, John Stuart Alfered Marshall in the Principles of Economics observed as follows:

"The wisdom of expending public and private funds on education in not to be measured by its direct fruits alone. It will be profitable as a mere investment, to give the masses of the people much greater opportunities, than they can generally avail themselves of. For by this means many, who would have died unknown, are able to get the start needed for bringing out their latent abilities. The most valuable of all capital is invested in human beings."

Introduction of compulsory and free education abolished child labour and there is an interlinked between child labour and compulsory education. Article 24 of the Constitution bars employment of child below the age of 14 years. Article 45 is supplementary to Article 24 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution. The Court in series of cases has unambiguously declared that right to receive education by the child workers is a part of the right of personal liberty embodied in Article 21 of the Constitution. In *M.C. Mehta v. State of Tamil Nadu* The Supreme Court directed that children should not be employed in hazardous jobs in factories for manufacture of match boxes and fireworks, affirmative steps should be taken to keep children away from these works and some constructive steps to be taken for their future perspective.

In *Goodricke Group Ltd v Center of West Bengal*, the Court held that it would be for the Centre and State/Union Territories to raise necessary resources to achieve the goal of providing free education. The state shall provide free and compulsory education to all children of the age of six to fourteen years according to the recently inserted Art.21-A in the Constitution of India (Amendment) Act, 2002 in such manner as the state may, by law, determine. In *Unni Krishnan J.P. v State of Andhra Pradesh* Justice Mohan observed:

"In educational institutions which are seed-beds of culture, where children in whose hands tremble the destinies of the future, are trained. From their ranks will come out when they grow up statesmen and soldiers, patriots and philosophers, who will determine the progress of the land."

Child Labour Welfare and Locus Standi

The liberalization of the concept of locus standi, to make access to the court easy, is an example of the changing attitude of the Indian Courts. It is generally seen that the working children by and large come from the families, which are below the poverty line, and there are no means to ventilate their grievance that their fundamental rights are being breached with impunity. Keeping in view the pitiable conditions of the child workers, the apex court has shown its sensitivity towards the poor people by relaxing the concept of locus standi. One important case in which Supreme Court entertained a letter, sent by post as public interest litigation was the *Peoples Union for Democratic Rights v. Union of India* Also known as the *Asiad Workers* case. The Supreme Court held that though the Employment of Children Act, 1938 did not include the construction work on projects because the construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Article 24 children under 14 could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding.

They have no faith in the existing social and economic system. A high water line in the application of the Article 24 of the Constitution was reached in the decision of the Court in *Salal Hydro Project v. Jammu and Kashmir* wherein the Court repeated the above stand. The Court maintained that child labour is an economic problem. Poor parents seek to argument their scanty income through employment of their children. Therefore, a total prohibition of child labour in any form may not be socially practicable in the prevailing socio-economic environment. Article 24 therefore, puts only a practical restriction on child

labour. The Court further observed that so long as there is dire or extreme level of poverty in this country, it would be difficult to eradicate child labour.

Juvenile Justice

In the year 2000, The Juvenile Justice (Care and Protection) Act, was enacted as human rights legislation and now it is running in full strength in all State uniformly, repealing the entire Children's Act enacted by states individually. This legislation deals with the two types of juveniles. "Juvenile in conflict with law" as defined under Section 2(1) and child in need of care and protection as defined under Section 2 (d). A juvenile or a child as defined under Section 2 (k) is a person who has not attained the age of 18 years. The bastilles system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation.

In *Sheela Barse v. Union of India*, Ms. Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally confined in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody. The Court observed that children in jail are qualified to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails. In *Sheela Barse v Secretary Children Aid Society* the Supreme Court came forward to protect the rights of the children in the observation homes.

Adoption of Children

Adoption is defined in Section 2(2) of the Juvenile Justice Act, where adoption is defined as the process or system through which the adopted child is permanently separated from his biological parents and becomes the child of his lawfully adopted parents.

Adoption concerns two of our basic human concerns identity and family. A child's rights to an identity and family are now universally recognized. They are enshrined in the United Nation Convention on the Rights of the Child, 1989. The Activist Supreme Court of India in *Lakshmikant Pandey v Union of India*. This writ petition has been initiated on the basis of a letter addressed by one Laxmi Kant Pandey, an advocate practicing in this Court, complaining of mal-practices indulged in by social organizations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign students.

The letter referred to a press report based on "empirical investigation carried out by the staff of a reputed foreign magazine" called "The Mail" and supposed that not only Indian children of tender age are under the stiffness of adoption "exposed to the long dreadful journey to distant foreign countries at great risk to their lives. In cases where they survive and where these children are not placed in the Shelter and Relief Homes, they in passage of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents. The petitioner accordingly sought relief restraining Indian based private agencies from carrying out further activity of routing children for adoption abroad and directing the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents.

This letter was treated as a writ petition and by an Order dated 1st September, 1982 the Court issued notice to the Union of India the Indian Council of Child Welfare and the Indian Council of Social Welfare to appear in answer to the writ petition and help the Court in laying down principles and norms which should be followed in determining whether a child should be allowed to be adopted by foreign parents and if so, the procedure to be followed for that purpose, with the object of make sure the welfare of the child. In this case, the Supreme Court held that any adoption in violation of or non-compliance with might lead adoption to be declared invalid and expose person concerned with to strict action including prosecution. Further, social activists have taken safe way to protect children and promote desirable adoptions. The Government of India framed a national policy in this regard.

Sexual Exploitation of Children

The right to live with dignity of a child becomes extremely get violated when a child exploited sexually especially the girl child.

Human Rights are derived from the dignity and worth inherent in the human person. Human right and fundamental freedom have been retreated by the Universal Declaration of Human Rights. The human rights for women, including girl child age, therefore, inalienable, integral and indivisible part of universal human rights. All forms of discriminations on ground of gender is violative to the fundamental freedoms and human rights. It would, therefore, be vital to take all steps to prohibit prostitution. Eradication of prostitution in any form is integral to social weal and glory of womanhood. Right of the

child to development hinges upon elimination of prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

In the year 2006, the petition was brought into account to resist the abuse and exploitation of tender aged children in circus industry. Central Government has been ordered to bring a notification to prohibit the employment of children in circus and to conduct raids to rescue children already working in circuses and frame proper scheme for their restoration and protection. During the hearing in this case, several recommendations were put forth by petitioner and respondent, contemplated on reforming existing legal and procedural mechanism on child protection. This recent order is just one of the important among the several orders, which may be given by Hon'ble Supreme Court in due course of time as Hon'ble Court has made clear its goal to deal with issue of children's exploitation in a long term and systematic manner. Assuring to deal with children's exploitation firmly, Supreme Court has observed that, to deal with the problem of children's exploitation systematically.

In *Vishal Jeet v. Union of India* Supreme Court in this case deals with some seminal questions relating to the sexual exploitation of children. The SC has been in this case observed that it is highly disgraceful and heart rending to note that many poverty stricken children and girls in the prime age of youth are taken to the 'flesh market' and forcibly pushed into "flesh trade" which is being carried on in utter violation of all canons of morality, decency and dignity of mankind. In *Gaurav Jain v. Union of India*, the Supreme Court held that the prostitutes who have children should get equal opportunity, dignity care, protection and rehabilitation for their proper well-being and development without labelling any pre-stigma on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

Sakshi v. Union of India, in this Public Interest Litigation matter, the Supreme Court of India asked the Law Commission to consider certain important issues regarding sexual abuse of children submitted by the petitioner and the feasibility of amendment to 375 and 376 IPC.

Rehabilitation of Child Prostitutes

The child prostitutes rescued and they should be rehabilitated under the Nodal Department, namely; Department of Women and Child Development under the Ministry of Welfare and Human Resource, Government of India. It would come up with suitable

schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the Juvenile Justice (Care and Protection) Act. They should not be left to go on themselves; instead they should be rehabilitated through different kinds of self-employment scheme or such measures as are indicated by the Supreme Court in this case. The juvenile homes should be used only for a short stay or relieve the child prostitutes and neglected juveniles from the trauma they would have suffered. Such children need to be rehabilitated in the proper manner. The details are required to be worked out by meaningful procedure and programmers. In the light of the directions already given by this court from time to time to the central government state governments and Union Territory Administrators, adequate steps should be taken to rescue the prostitutes, child prostitutes and the neglected juveniles.

All the concerned should take appropriate measures to provide them ample of safety, protection and rehabilitation in the juvenile homes manned by qualified trained social workers or homes run by NGOs with the aid and financial assistance given by Government of India or state government concerned. A nodal committee with the public-spirited NGOs, in particular women organizations women members should be involved in the management. Adequate encouragement may be given to them. The needed funds and aid should be provided and well-timed payments disbursed so that the scheme would be implemented effectively and fruitfully.

Guardian: The Protective Role

The architect of our Constitution clearly lays down that it is the foremost duty of the judiciary to act as a guard of human rights and act as a shield against any kind of infringement. That is why the fundamental rights have been made justifiable so that the courts can mediate in its protection against any violation, be it from the State or any individual. It puts certain limitations and diminution on government's action. Even the Constitution has emphasized this role of the judiciary through Article 32(1), which says that the Apex Court shall have power to issue directions or orders or writs, including in the nature of habeas corpus, mandamus, prohibition, quo warranto and certioraris, whichever may be appropriate, for the enforcement of any of the rights conferred by this article. Moreover, an individual has been conferred by virtue of Article 32 to move the court whenever he feels that his rights have been crossed upon. In *Daryao v/s State of Uttar Pradesh*, the court has been observed that the fundamental rights are intended not only to

protect individuals rights but also they are based on high public policy. Liberty of the individual and the protection of his fundamental rights have spirit of the democratic way of life adopted by the Constitution and it is the privilege and the duty of this court to uphold those rights. This court would naturally refuse to restrict them or to curtail them except as provided by the Constitution itself. Clearly asserting its role as protector, the Apex Court in *Romesh Thapper vs. State of Madras* stated that This court is therefore constituted the protector and guarantor of the fundamental rights, and it cannot, consistently with the responsibility so laid up on it, refuse to entertain applications, seeking protection against infringement of such right. In playing the role as protector of human rights, the judiciary has taken a fourfold path.

Firstly, it has declared unconstitutional, which have infringed upon our fundamental rights. In fact, Article 13(2) states that 'the state shall not make any law which takes away or abridges the fundamental right and a law contravening a fundamental right is, to the extent of the contravention, void. Hence Article 13 makes the fundamental rights justiciable. In the *State of Madras vs. V.G. Row* the Apex court did reinforce its role as a protector.

The second path taken by the Apex Court that to protect or prohibit individual from giving up his fundamental rights. In *Behram vs. State of Bombay*, Justice Venkatarma Ayyar did support the disagreement that an individual could waive his fundamental rights in which case, even if the law infringed his rights it would apply on him. However, the majority in the Bench disagreed with it and asserted that the doctrine of waiver could not be applied in the case of fundamental rights. Even in the *Basheshar Nath vs. income Tax Commissioner* the court decided against the doctrine of waiver. It assured that the fundamental rights are compulsory on the State and that no citizen can by his will or act relieve the State of its obligation imposed on it by virtue of these fundamental rights, Thus by establishing the doctrine of non-waiver of fundamental rights, the Apex Court has further strengthened the concept of human right in the society.

The third path taken by the Apex Court that to act as a protector on the aspect of amendability of fundamental rights. It was a long journey from Shankari Prasad case to the *Minerva Mills* case, and in course of that period the Apex Court has finally come to the opinion that the fundamental rights can be amended but subject to the doctrine that the basic or fundamental features of the Constitution cannot be amended. The justification behind this view is that the constitution uses the word 'amend' which has a restrictive

connotation; hence the Parliament cannot effect a fundamental change in the constitution. The doctrine of the basic features was repeated in many cases firmly establishing it in the Indian jurisprudence.

Fourthly, the Apex Court by pronouncing these judgments firmly lay down the proposition that judicial review is a basic feature of the constitution. In fact, the very survival and protection of human rights is dependent on this doctrine of judicial review. Here in the case of *Keshvananda Bharati*, Justice Khanna observed that As long as some fundamental rights exist and are a part of the Constitution, the power of judicial review has also to be exercised with a view to see the guarantees afforded by those rights are not breached. Therefore, judicial review become an intrinsic part of our constitutional system. Mirroring a similar sentiment, Chief Justice Chandrachud, in the *Minerva Mills* case observed that Judicial Review is the function of the judges, in fact their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A controlled constitution will then become uncontrolled. In the same case, justice Bhagwati observed that it is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law, which inter alia requires that the exercise of powers by the government whether it be the Legislature, the executive, or any other authority, be conditioned by the Constitution and the law. The power of judicial review is fundamental part of our constitution and basic structure of our constitution.

Thus, by ensuring that judicial review is a basic feature of Constitution, the judiciary has make sure that human rights are upheld at all times. Along with the power of judicial review, Apex Court has used its power of interpretation in not only protecting human rights but also spreading the span and application. There are many cases where the Apex Court has applied its power of interpretation innovatively. As a protector also it used the power of interpretation but in a purely legalistic and narrow sense.

Human Rights of Child under Article 21

Child is the future custodians of Nation irrespective of any differences. They are the future protector of our society. Children are the future hopes, ambitions, goal, and they are the future shoulders' in the form of great philosophers, rulers, scientists, politicians, able legislators, bureaucrats, teachers, judges, technologists etc. Therefore, it is our foremost responsibility to protect their human rights.

Though they are the human resource but defenseless and vulnerable. Various laws in India, focusing on a position where children were treated as nostrum and where conscientious efforts have been made to not only make them free from exploitation and abuses but also enable them to develop their full potentiality with fair access to food, health, education and respect.

In *Unni Krishnan J.P. v State of Andhra Pradesh*, Justice Mohan held that, in educational organization which is breeding ground of culture and society, where children in whose hands quiver the destinies of the future, are trained. From their ranks will come out when they grow up political leaders and soldiers, patriots and philosophers, who will determine the progress of the nation.

Equality before law and equal protection of laws are considered as the most essential column of human rights of the universe of freedom that is where ever freedom to assert human rights is recognized, under Indian Constitution. India is the main democracy in the world, a sovereign, socialist, secular democratic and republic with a inclusive charter of rights written into its constitution. It is true that Article 21 is worded in negative terms but it is now well settled that Article 21 has both negative and corroborative dimension. 'Positive rights are very well conferred under Article 21 of the Constitution.

Bonded Child Labour

It is regretful that when the most vulnerable group of our society struggle for primary needs like food and shelter and in many situation, it is seen that they are sweating in the heat of stone quarries, working in the fields sixteen hours a day, picking rags in city streets, or hidden away as domestic servants, these children endure miserable and difficult lives. They struggle to make enough to eat and perhaps to help feed their families as well. They do not go to school; more than half of them will never learn the barest skills of literacy. Many of them have been working since the age of four or five, and by the time they reach adulthood they may be unalterably sick or deformed-they will certainly be exhausted, old men and women by the age of forty, likely to be dead by fifty.

Around fifteen million of children work as bonded laborers in India and were put into bondage in exchange for comparatively small sums of money. It is submitted that vast numbers of people are extremely poor in India; however, this money can be, literally, a lifesaver. With scant alternative sources of credit available-few rural banks, cooperative credit schemes or government loans-the poor are forced to turn to the local moneylender,

who extracts the only collateral available: the promise of their labor or the labor of their children.

Two players create the debt bondage arrangement the creditor-employer, who offers money to an impoverished parent in an attempt to secure the extremely cheap and captive labor of his or her child, and the parent who accepts this money, agreeing to offer the child's labor as surety for the debt. The child is a commodity of exchange. She or he is powerless to affect the agreement or its terms and-whether willing or unwilling to serve the bond master-powerless to refuse. Because they are vulnerable, unaware of their rights. They are unaware about how to protect them from such agreement and accepted the deal that made by their parents itself for a little amount of penny. They sacrificed their childhood unknowingly.

Such arrangements between parents and contracting agents are usually informal and unwritten. The number of years needed to pay off such a loan is indeterminate. Many of the children interviewed by Human Rights Watch had already been working for several years, and even among those relatively new to their jobs, none said that they expected to be released prior to maturity. Some wished to walk away from their bondage when they married, leaving a younger sibling to take over the labor-payment or a parent to somehow extinguish the debt-perhaps by a new loan from a different creditor-employer.

In many industries marked by the use of debt bondage, the child's labor does not function to pay off the original loan at all. Instead, the child's labor serves as both interests on the loan-for the children are paid only a fraction of what their labor would bring them on the open market-and as a surety for the loan's repayment. The original amount loaned to the parent must be repaid in full in a single installment; only then will the child be released from enslavement.

About 40 million child work force is exist in India. Child labor is being considered as a form of modern slavery, where children are forced to work or they have no choice to refuse work. Children are employed in a variety of occupations, many of which are precarious. Exposure to machinery, pesticides, dust in agricultural work and fumes, chemicals, acids, cotton and wool fiber in other forms of work is detrimental to health. A large number are held in bonded slavery. In urban areas, children are employed as domestic helpers and engaged in eateries and auto-repair work. Trafficking and trading of children for work and sexual slavery are also major concerns. Poverty and illiteracy are root causes of child labor, but wicked societal attitudes are responsible for abuse and

exploitation. Working children are deprived of proper health care and education, and lose their childhood and dignity. Several legal measures exist to prevent child labor and protect them from harm, but are countered by the distressing socio-economic conditions. Although child labor would be difficult to abolish, exploitation can be prevented with concerted efforts of the government agencies, professional bodies and the civil society.

Judicial Response in Trafficking and Sexual Abuse

The judiciary, under the semblance of interpreting the law, goes a step beyond, and ends up giving the country new binding law, which is usually different from the existing one then it constitutes Judicial Activism. In this modern era, Judicial Activism emerged as tool for curbing Child trafficking from grass root level. Child trafficking refers to the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of misuse. An overview of major laws came to conclusion that child is a person who is above 18 years of age. Child trafficking shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. What is very disturbing is that the available evidence indicates that one third of people exploited in flesh trade are children/minor.

Child trafficking is occurring globally and is not limited to any geographical region or country. It is a gross violation of the human rights and fundamental freedoms of children. It violates upon the child's physical and mental integrity, which are central to the experience of human dignity and, poses a significant threat to the child's life. Child trafficking is inherently a dynamic, hidden phenomenon that is difficult to identify. Children –boys and girls– have been exposed to unequalled vulnerabilities. Nations are attempting to combat this trade in human misery through legislative, executive, judicial and social action. Children and their families are often tempted by the promise of better employment and a more prosperous life far from their homes. Trafficking violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse. In India too, over the last decade, the volume of human trafficking has increased though the exact numbers are not known, it is one of the most

profitable criminal trades, next to arms and drug smuggling undertaken by highly organized criminals.

The problem of child trafficking is the result of a constellation of factors, including widespread poverty, lack of livelihood opportunities, established gender discrimination, displacement, the demand for young girls, the upheaval associated with natural disasters/conflict in parts of the country and the profits to be made. In some cases, socio-cultural and religious factors have an impact on child trafficking, as where religious figures have made use of their position to traffic girls for prostitution. Additional risk factors include, for example, parent illiteracy, illness or death of one of the main family bread-earners, unemployment, early school drop-out of the concerned children, absence of workplace inspection or policing, and a specific demand for child labour. Frequently, trafficking is skilled through the deception of girls and their families. In many villages in West Bengal it is reported that traffickers have obtained access to girls by pretending to be grooms without dowry demands. In other cases, trafficking has been facilitated by relatives or friends of the victims, as well as teachers and placement agencies. The traffickers also did unfair treatment, lack of political will by governments to tackle trafficking, and its root causes. Moreover, girls who have been exploited are also commonly used to lure girls from source areas.

In addition, increasing breakdown of social structures; Globalization and economic disparities between countries, and porous borders facilitates easy movement of people and the traffickers to traffic women and children into exploitative situations, including prostitution and labour, exploit large-scale illegal migration of women and children into India from the neighboring countries and this illegal migration.

Approaches adopted by NGOs and NGO networks to address the problem of trafficking in children in India Different NGOs in India have established programs and projects in order to provide education and vocational training to the risk groups of populations in the country. The programs are mostly aimed at preventing children from being deceived and trafficked and also for decreasing the problems related to illegal migration. Although welfare is Government's task, it is also undertaken by NGOs within limited scenario of funds and space. Despite their limited resources, funding, training, and access to information, most NGOs have taken the lead in combating trafficking. There are a number of NGOs which have played credible roles in the field of trafficking to serve and save individuals. PLAN India is a child-centred development organization that aims to

promote child rights and improve the quality of life of vulnerable children. Plan works in 13 States in India and has directly impacted lives of over a million children and their families since 1979. The organization's child-centred community development interventions focus on child protection and child participation, children in difficult circumstances, education, HIV/AIDS awareness, health, early childhood care and development, etc. Shakti Vahini in Delhi ensures that the trafficking cases are investigated properly and exploitation happening from source, transit and destination are linked. Since 2010, Shakti Vahini has intervened in 1270 cases and rescued 1300 victims. It has also been part of 462 court proceedings and trial and has achieved conviction in 26 cases till date. Shakti Vahini has been involved in various Public Interest Litigations on issues connecting to human trafficking and victim protection. The NGO ARZ in Goa has been working against abuse and exploitation amongst the victims of commercial sexual exploitation. The organization has been collaborating with the government, philanthropists, corporate houses and other NGOs to combat human trafficking related to commercial sexual exploitation. Bachpan Bachao Andolan is a pioneering child rights movement working to end child trafficking, campaigning for the rights of children.

Judicial interpretation on Intersex Children

Landmark judgment on intersex children is *Arunkumar & Other v The Inspector General of Registration & Others*. This judgment of the Madras High Court is considered a momentous judgment for rights of intersex children in India as it recognises their consent rights and the right to bodily integrity and prohibits sex selective surgeries on intersex children in the state of Tamilnadu. The term "intersex" is an umbrella term used to "describe a wide range of natural bodily variators. Intersex people are born with sex characteristics that do not fit typical binary notions of male or female bodies. In some cases, intersex traits are visible at birth while in others, they are not apparent until puberty."

With respect to the stigma and public awareness on this issue, the court made the following observation:

Any intersex child is entitled to and must stay within the folds of its family. The running away from the family to the margins and beyond is a fatal journey that must be arrested. The parents must be encouraged to feel that the birth of an intersex child is not a matter of embarrassment or shame. It is lies in the hands of the Government to launch a sustained awareness campaign in this regard.

There is another relevant Supreme Court judgment on this line *National Legal Services Authority v. Union of India*, in which the apex Court declared, “[N]o one shall be forced to undergo medical procedures, including SRS, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity.” And under the scheme of the Constitution, “the law declared by the Supreme Court shall be binding on all courts within the territory of India” (Article 141 of the Indian Constitution).

Conclusion

The tiny nimble fingers are only for playing, writing and counting the moments of childhood. These are their absolute rights. They have rights of counting the stars of night sky; they have the rights of running behind the butterflies. Childhood is a moment of cherish. Some extent and in many cases these are only stands as an imagination.

Under the pressure of family and society due to the extreme poverty and many family reasons, children have to sacrifice their childhood, quit school and started to do work for financial assistance of parents.

It is submitted that the child exploitation, child labour are the silent factors of today's society. The Judicial system has put an extra long step to eradicate these evil practices of society. BACHPAN BACHAO ANDOLAN is one of the major events against child trafficking, child abusing, child abduction, child labour etc. Recently judicial activism is emerged as a trending tool for protection of human rights of children.

CHAPTER 6

CONCLUDING OBSERVATION

The Constitution of India has been an outstanding document for protecting the rights and interest of its citizen. The children are no exception to it as various provisions, right from the Preamble, Fundamental Rights and the Directive Principles of State Policy to the present day judicial activism, our Constitution has been trying its best to protect the interest of the children. However, in spite of all the constitutional, legal and institutional provisions rights of children are being violated in India. Child labour is an issue where rights of children are widely violated. Constitutional provisions like justice, equality, liberty, and the fundamental rights have failed to protect the interest and rights of children and specially the poor child labourer.

Children can no longer be considered as passive recipients of services. Governments and civil society must accept children as partners and facilitate their participation in matters which affect their lives. The challenge is, therefore, to change the mindset that children can no longer be objects of charity, philanthropy, and welfare. They have rights and the government is obliged to provide for them. There must be legislative, administrative, and judicial support to implement the policies, plans, and legislations in the interest of the child (Bajpai, 2003). Still millions of children are working, even in hazardous conditions all over the country. Let us hope that within a reasonable timeframe we will achieve the desired goal of a child labour free country.

Summing up the idea of Child Rights in India

Children constitute the nation's valuable human resources. The future well being of the nation depends on how its children grow and develop. The great poet Milton said "Child Shows the man as morning shows the day". Therefore, it is the duty of the society to look after every child with a view to assuring full development of its personality. Unfortunately, millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse. The age of the child has been differently defined in different laws. There are no definite criteria or scientific parameters in defining the age of the child. The Constitution of India under Article 24 defines 'Child' as any one below the age of 14 years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Under Child Labour (Prohibition and Regulation) Act, 1986 'Child' means a person who has not completed his 14 years of age. Article 21-A of the Constitution states that 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. Now, amended Article 45 of the Constitution states that, the state shall endeavor to provide early childhood care and education for all children until they complete the age of six years. But according to Article 1 of the United Nations Convention on the Rights of the Child 1989, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier. Under Juvenile Justice (Care and Protection of Children) Act, 2000 the age is fixed at 18 years. Thus, there is no uniform fixation of the age of a child. Unfortunately, the children in India are subjected to various forms of abuse. National Study on Child Abuse recorded its findings very exhaustively on various forms of abuse of children and these are child labour, physical abuse, emotional abuse, substantial abuse, Girl child neglect and sexual abuse.

Socio-economic conditions prevailing in the society are strongly responsible for the abuse of child in different forms. High literacy and low literacy rate, equally contribute to the problem of child abuse. Among the various forms of abuse of children it would be more pertinent and relevant to focus on child labour. Child labour is a abuse and exploitation of children and children pre-maturely leading an adult like life. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. The concept of child labour is complex in its nature. It is very difficult to define and give a valid definition of child labour. But International bodies, like UNICEF, ILO, Research Groups, had made their best endeavour to define the concept of child labour in a more logical manner based on time and space factor.

Taking in to consideration of consequences of child labour, the ILO has provided a comprehensive definition. "Child Labour" includes Children prematurely leading adult lives working long hours for low wages under conditions damaging to their health and to their physical and mental development, some times separate from their families, frequently deprived of meaningful educational and training opportunities that could open up for them a better future. In this context, child work and child labour often used synonymously, but have different connotations and understanding. All work is not bad for children because, some light work properly structured and phased is not child labour.

It is submitted that work which does not detract from other essential activities for children such as leisure, play and education are not child labour. 'Child labour', therefore, is the work which involves some degree of exploitation, namely, physical, mental, economic and social and therefore implies the health and development of children. Thus, child labour

is a subset of child work which implies that “all child labour can be termed as child work but all child work cannot be child labour”. Thus, there is a gap between two concepts, although, both appears to be one and the same, when it is investigated forensically difference can be made out.

“Poverty is a great enemy to human happiness; it certainly destroys liberty, and it makes some virtues impracticable and others extremely difficult”. Children thus become instrument to augment family income and are seen as a means to alleviate poverty. There were two Pre-United Nations Instruments, namely the Geneva Declaration of 1924 which provides that the child must be protected against every form of exploitation and the U.N. Charter 1945 and Human Rights focussed on the dignity and worth of the human being which includes children. In the United Nations Instruments, the United Declaration of Human Rights, 1948 under its Article 25(2) says that “Motherhood and Childhood” are entitled to special care and assistance. All children whether born in, or out of wedlock shall enjoy the same social protection. The United Nations Declaration of the Rights of the Child, 1959 was indeed a very important event as regards the international recognition of right of the child. International Covenant on Economic, Social and Cultural Rights, 1966 provides that children and young persons should be protected from economic and social exploitation. The International Covenants on Civil and Political Rights, 1966 under its Article 24 stated that, every possible social and economic measures should be undertaken to prevent forced labour and prostitution.

The United Nations Convention on the Rights of the Child, 1989 is a most important human rights document focusing and concentrating on children. The Convention contains 54 Articles and it provides Civil, Political, Social, Economic and Cultural Rights to every child, and out of 54 Articles 41 related to the rights of children. These rights are the Right to Protection, the Right to Development, the Right to Participation and the Right to Survival. Article 32 prohibits practice of child labour and recognizes the rights of the child to (i) be protected from economic exploitation and performing any work i.e. likely to be hazardous; or (ii) interfere with his education ; or (iii) be harmful to the child’s health or physical, mental, spiritual, moral or social development.

The practice of child labour in India or in any country of the world is an age old phenomenon. Since ancient time child labour existed in the Indian society in one form or the other. During ancient time the child labourer were regarded as ‘child slaves’. Tender aged children who were under eighteen by the custom treated them as chattels. Kautilya

was not in favour of employment of children. The practice of child labour was existing in ancient India in the form of slavery.

In the modern era, during British rule significant changes were brought by the then Government. The first protective Child Labour Act was enacted in 1881, this was known as Indian Factories Act, 1881. During the Modern era, before independence efforts had been made by bringing various legislations for elimination of child labour.

The history of child labour law found little improvement under the Indian Factories (Amendment) Act, 1922. According to the mandate of ILO Convention on the minimum age, for admission for children into employment, hours of work and night work of young persons and women. At present there are 14 legislations to control and regulate child labour in India. Children (Pledging of Labour) Act, 1933 was the first statutory enactment dealing with child labour.

Then, the Employment of Children Act, 1938 was enacted which had been in force till repealed and replaced by Child Labour (Prohibition and Regulation) Act, 1986. The main object of the Act was to prevent the employment of children under the age of 14 years to work in occupations and curbed the exploitation of the Child Labour. One of the drawbacks of the Act was it had not provided any provision with regard to the health, safety, medical examination and welfare of children. This Act was amended as many as five times during the year 1939, 1948, 1949, 1951 and 1978 only to ameliorate working conditions of children. The Factories Act, 1948 raised minimum age of employment of children.

The Factories Act, 1948 raised minimum age of employment of children in factories to fourteen years and section 67 of the Act enacts an absolute prohibition of employment of child in any factory. The Minimum Wages Act, 1948 defines a child as a person below 15 years and it provides for minimum wages for children and apprentices. The Plantation of Labour Act, 1951 prohibited the employment of children under 12 years in plantations and now by amendments under the provisions of Child Labour (Prohibition and Regulation) Act 1986, age of the child has been increased to 14 years. The Merchant Shipping Act 1958 prohibits children under 15 to be engaged to work in any capacity in any ship, except in certain specified cases. Again, the Motor Transport Workers Act, 1961 prohibits the employment of children who are less than 15 years in any motor transport undertaking. In the same year the Apprentices Act 1961 was enacted which prohibits the apprenticeship / training of a person of less than 14 years. The Beedi and Cigar Workers (Conditions of

Employment) Act, 1966 prohibits (a) the employment of children under fourteen years in any industrial premises manufacturing beedies or cigars and (b) persons between fourteen and eighteen years from working at night between 7 pm and 6 am.

The debate about whether child labour should be banned or regulated is not new. It surfaced in 1985 when the Govt. of India claimed that "Child labour was a harsh reality" National Child Labour Policy 1987 was introduced and implemented National Child Labour Projects in 1988 for the rehabilitation of child labour. In the dawn of the new millennium, Government of India brought various legislations and made amendments to the existing laws. The Second National Commission on Labour, 2002 which has recommended the repealing of the existing child labour (Prohibition and Regulation) Act, 1986 and suggested a new model Act as child labour (Prohibition and Rehabilitation) Act, "To prohibit Employment of children in all employments and to regulate employment of children where permitted".

Trafficking in human beings, more so in women and children, is one of the fastest growing forms of criminal activity. The right against exploitation is a fundamental right guaranteed by the constitution of India under Article 23, traffic in human beings, "beggar", other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in accordance with the law.

The judiciary has played an important role in the protection of fundamental rights of citizens in general and children in particular. Judicial interpretation and activism had created new hope and aspiration among the citizens because of tremendous growth of statutory intervention in the present era due to emergence of liberalization, privatization and globalization and movement of protection of human rights of children. Time and again judiciary has pronounced judgments for eliminating the problems of child labour in India. With regard to this, Justice K. Subba Rao, a former Chief Justice of India observed: "Social Justice must begin with children. Unless a tender plant is properly tended and nourished, it has little chance of growing in to a strong and useful tree. So, the first priority in the scale of social justice shall be given to the welfare of children".

There is plethora of cases, where in judiciary has made significant contribution to the cause of child workers. The Court has given new dimension to several areas, such as locus standi, minimum wages, and employment of children and pronounced many verdicts which deal with the payment of minimum wages to the children and protection of their fundamental rights and sexual exploitation of children in hazardous occupations which

reflect the judicial creativity in the field of the welfare of the children including the child workers.

The Government's commitment and priority to child protection is critical to the creation of a protective environment for its children. The Government needs to demonstrate this commitment through the acceptance and recognition of problems, formulation of appropriate policy, strong legal frameworks and programming, and allocation of adequate resources to programs. It needs to ensure that mechanisms for child protection are child friendly, functional and in a position to reach children in needs of protection.

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