
Indian Perspective on the Legal Response towards Rights of Child: An Overview

Dr. Sanjay Sindhu

Associate Professor, Department of Laws, Himachal Pradesh University, Summer hill, Shimla.

It is widely accepted fact that children are the most important assets of any nation. Hence, children are said to be the future as the strength of the nation lies in a healthy, protected, educated and well-developed child population that will grow up productive citizens of the country. Existing socio-economic conditions also render some children vulnerable and more at risk to abuse, exploitation and neglect, India is a home to almost 19 percent of the world's children. More than one third of the country's population, around more than 440 million is below 18 years of age. According to one assumption 40 percent of these children are in need of care and protection which indicates the extent of the problem.ⁱ The challenge is to reach out to the most vulnerable and socially excluded child of this country and create an environment wherein, not only is every child protected but s(he) also has access to opportunities and education for her/his all round and development is indeed daunting.ⁱⁱ Both at the national level and the international level greater interest is being shown in the matter of welfare of children. Children need special protection because of their tender age, physique and mental faculties. In fact very few statutes relating to children were enacted during the pre-independence era, but the Britishers had a general apathy towards the welfare of the people of India including children. After independence, however, the state has become fully conscious of its responsibility towards children. This consciousness is reflected in some of the Constitutional provisions and a number of enactments for securing the well-being of children. Presently, there are almost 250 central and state legislations dealing with the welfare of the children. Apart from the laws specially enacted for the welfare of children, laws had to be passed regulating the relationship of individuals with children keeping in view their tender years.ⁱⁱⁱ The broad classification in which these enactments fall is; marriage, legitimacy, guardianship, maintenance, adoption, criminal law, reformatory services, probating, children homes, prohibition of smoking, suppression of immoral traffic, child welfare, prevention of vagrancy and beggary, tortuous and contractual liability of children, transfer of property, labour welfare, education of children, child health and other miscellaneous matters. This paper is an attempt to highlight the important provisions of some existing laws extensively dealt with the rights of the children.

MEANING DEFINITION OF THE TERM 'CHILD'

There are multiple variations in the definitions of the age of the child. Frankly speaking, almost in every sphere, age limits formally regulate children's action^{iv} According to international law, a child means every human being below the age of 18 years. This is a universally accepted definition of a child and came from the United Nations Convention on the Rights of the Child (UNCRC),^v an instrument accepted and rectified by most countries.^{vi}

In simple words the definition of a child under United Nations Convention on the Right of the Child's of the child, covers all human beings under the age of 18 unless the relevant natural law recognizes an earlier age of majority. Some vernacular definitions of child include the foetus, as being an unborn child.^{vii} The word child has not been defined under the Constitution of India, 190 or under General Clause Act. However, the Child cannot be said to be identical with the word Minor. Indian laws consider anyone less than 18 years to be a minor child. The very problematic or analytical interpretation starts with this definition of a child in law, because there are several grey areas in the Indian laws. The term 'child' as per the Factories Act 1948 means, a person who has not completed his 15 years of age.^{viii} Whereas the Child Labour (Prohibition and Regulation) Act, 1986 defines child, as a person who has not completed his age of 14 years.^{ix} As per the Child Marriage Restraint Act 1929 is concern it lays down that child means a person who if a male, has not completed 21 years of age and if a female has not completed 18 years of age.^x The Juvenile Justice (Care and Protection of Children) Act 2000 defines child as a person who if a male below 16 years of age and if a female 18 years of age.^{xi} The Indian Penal Code, 1860 defines child as a person below the age of 12 years.^{xii} The Indian Child Welfare Act 1978 describes child as any unmarried person who is under the age of 18 years.^{xiii} According to Immoral Traffic (Prevention) Act 1956, child is a person who is less than 16 years of age.^{xiv}

Thus, in spite of various definitions, the definition of the term child covered under various Indian Law's not uniform and adequate. But a child is any human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier. The child does not necessarily mean minor but can include adult children as well as adult non-dependent child. Thus, from above different enactments it seems that it is not feasible to standardize the definition of the age of a child for application in all cases. It, however felt that it may be possible to have uniformity of age in particular fields for certain specific purposes.

INTERNATIONAL CONCERN ON THE RIGHTS OF CHILDREN:

There are many vulnerable issues relating to children which need to be protected. As child or minor do not have autonomy or the right to make decisions on their own for themselves. Children's rights law is defined as the point where the law intersects with a child's life. That includes juvenile delinquency, due process for children involved in the criminal justice system, appropriate representation, effective rehabilitative services, care and protection for children in state care, ensuring education for all children regardless of their origin, race, gender, disabilities or abilities, health care and education etc. Children's rights are defined in numerous ways, including a wide spectrum of civil, cultural, economic, social and political rights. Thus, rights have been labeled as the right of empowerment and as the right to protection.^{xv} They are being categorized into three: (i) provision; (ii) protection; and (iii) participation.

Firstly, the rights are in the nature of provision where children have the right to an adequate standard of living, health care, education and services, and right to play. These include a balanced diet, a warm bed to sleep in and access to schooling. *Secondly*, protection of children from abuse, neglect, exploitation and discrimination. This includes the right to safe places for children to play; constructive child rearing behavior, and acknowledgement of the

evolving capacities of children. *Thirdly*, as per the categorization, child has the right to participate in communities and have programs and services for themselves. This includes children's involvement in libraries and community programs, youth voice activities, and involving children as decision makers.

Thus, at the international level various efforts have been made to protect the child and to bring them equal with others in the society. The Declaration of the Rights of the children is the name given to a series of children; rights proclamations drafted by Eglantyne Jebb.^{xvi} This Declaration as adopted by the League of Nations in 1923 and subsequently became known as the Declaration of Geneva consisted of some important points like; the child must be given means requisite for its normal development, both materially and spiritually; the child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent must be reclaimed, and orphan must be sheltered; the child must be the first to receive relief in time of distress; the child must be put in position to earn livelihood, and must be devoted to the service of its fellow men. Subsequently, the United Nations in 1959 declared the Charter of the Rights of the child which is something called as the Declaration of the Original Points, incorporating the guidelines as principle of working in the best interests of the child.^{xvii} In the year 1966, the United Nations General Assembly adopted two covenants, the International Covenants on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. These covenants are reinforcement concerning the Universal Declaration of Human Rights, 1948. The United Nations Covenant on the Rights of Child was a human right treaty setting out the civil, political, economic, social, health, cultural rights of children. This convention consists of 54 Articles covering all four major categories of child rights, they are right to life, right to development, right to protection and right to participation. In addition to this the United Nations General Assembly adopted two optional Protocols on 25 May 2000 at New York. These protocols were adopted to provide protection to children in two areas that were of the up most importance and where states needed the most assistance and guidance to uphold child rights. These two areas were the protection of children from involvement in armed conflicts and from sexual exploitation. Despite these, optional protocols supplements the provisions of convention like, sale of children, child prostitution, child pornography, juvenile justice, child labour, child trafficking, etc. also provided detailed requirements for the criminalization of violation of the right of child.

CONSTITUTIONAL CONCERN FOR THE PROTECTION OF THE RIGHT OF CHILDREN

Presently, there is a growing concern about the rights of children and recognition of the need to protect them from neglect and abuse as child abuse has become one of the major problems all over the world. The Indian legal system has some relevant provisions for child rights protection. However, at present, there is no single legislation to deal exclusively with the problem of child exploitation and abuse. Most of the existing legal provisions are merely idealized postulates and are form from reality, due to the peculiar social economic structure of Indian society. It is only a dream to provide necessary facilities and protection to the child.^{xviii} The Constitution of India 1950 sets out the basic provisions for the protection of human rights of all citizens including those of children. Our founding fathers, wise and

sagacious as they were, had known that India would not be a reality as per their vision if the children of this country are not nurtured and educated. For the protection of children they included Part III and Part IV in the Constitution pertaining to Fundamental Rights and Directive Principles of State Policy. Thus, Constitution of India is sensitive to the problems of children and several provisions have been made therein for their welfare, in view of the children's vulnerability.^{xix} The Preamble to Indian Constitution unequivocally declares that all its citizens will secure social, economic and political justice; liberty of thought, expression, belief, faith and worship along with equality of status and opportunity. Part III of the Constitution, protects the basic human rights of all citizens including those of children and also contains certain provisions specially pertaining to the protection of child. In fact, children are the most vulnerable section of society. They are because of their position, become the victims of exploitation and ill treatment and can be directed into undesirable channels by anti-social elements. Founding father reflected their anxiety to protect and safeguard the interest and welfare of the women and children through Article 15(3).^{xx} Thus, by taking advantage of the spirit of this Article, the Parliament has enacted a number of special legislations for the protection of child.

Besides this the basic rights of the children are protected under the provisions of Article 21, which guarantees the right to life and has been interpreted as meaning not merely animal existence but right to life with human dignity.^{xxi} The right to life in itself not only includes the bare necessities of life but as a positive note it includes adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse form, freely moving about and mixing and commingling with fellow human beings. The judiciary has after the Landmark Judgement of Maneka Gandhi vs. Union of India,^{xxii} has, though the interpretative process, recognized the right to many of the basic necessities as well as those essential for proper development of human beings like food, shelter, healthcare, livelihood and education as inherent part of the right to life.^{xxiii}

Special reference concerning with the protection of the rights of children is Article 21A.^{xxiv} This Article, entrust, to the state the task of providing free and compulsory education to all in the age group of 6-14 years. The right to education has been included as fundamental right under the Constitution of India, which may not be denied to any citizen of India. Initially, the right to education was recognized only under Part IV of the Constitution. Taking help from the Article 41 and 45 (as it then was) the court held in the case of Unni Krishanan vs. State of U.P.,^{xxv} that every child of this country has a right to free education until he completes the age of 14 years.^{xxvi} In 2002, by Constitutional (86th Amendment) Act, right to education was explicitly included as a fundamental right.

Under Article 23 of the Constitution of India provides right against traffic and forced labour. The similar right against hazardous employment up to the age of 14 years is guaranteed under Article 24 also. Thus, Article 23 protects the individual not only against the state but also private citizens. It imposes appositive obligation on the state to keep steps to abolish evils of 'traffic in human beings' and beggar and other similar forms of forced labour wherever they are found. Children are trafficked due to poverty, illiteracy and lack of awareness in their families and may be forced to work as domestic labour for prosecution, for illegal organ transplants etc.

On the other hand Directive Principles aim at securing social and economic freedom by appropriate action. The directive principles visualize a society in which everyone has the place of dignity and recognition of his dignity. Article 39(e) lays down that the state shall in particular direct its policy towards securing the healthy and strength of workers, men, women and the tender age of children are not abused and that citizen are not forced by economic necessity to entry avocations unsuited to their age or strength.^{xxvii} Article 39(f) further directs that state 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 moral and material abandonment.^{xxviii} It is pertinent to mention here that the right to live with human dignity enshrined in Article 21 derives its breath from the Directive Principles of State Policy, particularly clause (e) and (f) of Article 39, 41 and 42 and includes protection of health and strength of workers, men and women, tender age children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom, dignity, educational facilities, just and humane conditions of work and maternity relief. The Constitutional Amendment Act 2002 came into existence because of Article 45 which states to Endeavour to provide for free and compulsory education for all children below age of 14 years. Article 47 imposes a primary duty upon the state to raise the level to nutrition and the standard of living of its people and improvement of public health.

Part IV-A which consists of fundamental duties was added by the 42nd Amendment, 1976, under Article 51-A (k)^{xxix} lays down 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.”^{xxx}

SPECIAL LEGISLATIVE PROTECTION FOR THE RIGHTS OF CHILDREN IN INDIA

Besides the Constitutional provisions for the protection of the rights of children, the Parliament has enacted a number of legislations dealing with various aspects of rights of children. Apart from the various acts dealing with children, the Indian Penal Code, 1860 is a general legislation dealing with the offences against children. A child who commits a crime and is a below the age of seven is not considered to have committed a crime.^{xxxi} A child who is between the ages of seven and twelve and is deemed to have immature understanding about the consequences of his/her action is also considered incapable of committing a crime.^{xxxii} The Indian Penal Code has provisions relating to the offences of foeticide,^{xxxiii} infanticide,^{xxxiv} person about to suicide of a child, i.e. a person who has not completed 18 years of age,^{xxxv} if mother or father of a child expose or leave a child in a place with the intention of abandonment,^{xxxvi} kidnapping of children,^{xxxvii} child found employing a minor for begging,^{xxxviii} crime being committed against a minor girl^{xxxix} etc. Sexual offences against children are also covered in the code for the purpose of prostitution or to illicit intercourse with any person, or knowing that it is likely that the child is being sold for such a purpose. It is a crime to buy a child for the purpose of prostitution or to illicit sex from any person.^{xl}

The Guardians and Wards Act, 1890 is a law to supersede all other laws regarding the protection of child. As per this Act a minor child is any person who has not completed 18

years of age.^{xli} The court or appointed authority has the ability to decide the guardian of a child.^{xlii} A guardian appointed under this Act is responsible for the health, education and support of the ward.^{xliii} The Hindu Adoption and Maintenance Act, 1956 is also one of the best and appropriate forms of alternative family care legislation in India. Indeed, this legislation breaks the mindset of institutional care for children, which has been posed as the only solution for many years. This Act applies to all Hindus, Buddhists, Sikhs and Jains by religion. Adoption according to Indian Law is a personal act and hence is governed by various personal laws of the different religions earlier. Hence, they usually opt for guardianship of a child through the Guardians and Wards Act, 1890.

The Factories Act, 1948 is another extensive and lengthy act covers a number of concerns for labours working in factories. This Act defines child as a person who has completed age of 15 years.^{xliv} The provisions of the Act concerned with the employment of children on dangerous machinery.^{xlv} The Act places time restrictions to the work of adolescents who have been granted a certificate to work as adults.^{xlvi} Moreover, the Bonded Labour System (Abolition) Act 1976 provides for the illegality of slave or bounded labour with reference to both adults and children. The Act allows the state to appoint a district magistrate and officers authorized by him to oversee the legal implementation of the Act.^{xlvii} It also requires that the state shall set up vigilance committees in every district. The committees are responsible for ensuring the full rehabilitation and recovery of all bounded labourers.

The Child Labour (Prohibition and Regulation) Act, 1986 embraces not only the rights of children but also the broad penology of entitlements across the whole spectrum of rights i.e., civil, political, social, cultural and economic rights. This legislation distinguishes between hazardous and non-hazardous forms of labour and identifies certain processes and occupations from which children are prohibited from working. In fact child labour laws protect children in the work place. This law ensures that all children have the opportunity to complete a quality education and become productive members of the society. This Act strive to protect children by imposing limitations placed on young workers because of their lack of emotional and physiological development, requiring special protection in the work place. This Act outlines various occupational processes and workshops in which children are not allowed to work.^{xlviii}

The Immoral Traffic Prevention Act, 1986 in another legislation of protection nature. The incidents of human trafficking in India have increased over the last few decades. In 1956, India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (popularly known as SITA). The Act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act (now known as (PITA)). This Act has a provision according to which any person involved in the recruiting, transporting, transferring, harbouring or receiving of persons for the purpose of prostitution if guilty of trafficking.^{xlix}

In the year 1989 India ratified the UNCRC which provides for the right of child to integrate into society without judicial proceedings were avoidable. In order to fulfill the standards of the Convention on Act was passed known as Juvenile Justice (Care and Protection of Children) Act, 2000. The Act calls for the establishment of Juvenile Justice Board where the State Government sees fit.¹ Besides detailed provisions this Act also lays down that juvenile cases cannot be processed with non-juvenile cases.^{li} Juveniles are not exposed to the media as magazines, newspapers, and visual media are not permitted to release the information about

the juvenile.^{lii} This Act has the provisions to penalize people who exploit children for a crime. A person, who employs a child in a hazardous industry, employs child for begging or provides a child with drugs or alcohol is liable to serve prison and fine.^{liii}

The Prohibition of Child Marriage Act 2007 is another legislation where there is a provision for the appointment of a Child Marriage Prohibition Officer, who is responsible for ensuring that no child marriage takes place in their jurisdiction by approaching the court for an injunction, collecting evidence against people, creating awareness about the negative effects of child marriage, collect data concerning child marriage etc.^{liv}

As a matter of fact, child marriage is also associated with other problems like dowry and child widowhood, malnutrition, poor health of mother and high fertility etc. Unfortunately, such practices are still prevalent in our society even after 68 years of independence. At the same time, today sex selection is another problem exists in India. Families are discriminate against girl child prefer to abort the child before it is born. The boy child is preferred since he will carry on the family name, provides for elders and is not a burden on the family at the time of marriage. In the year 1994, the Government of India in an attempt to stop female foeticide passed the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, in 2002 the Act was amended, and now this is known as, Pre Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 2002. This Act prohibits the medical practitioners from conducting or helping anyone in conducting sex determination.^{lv} All pre-natal diagnostic techniques are banned except for the detection of chromosomal abnormalities, genetic metabolic diseases, and haemoglobinopathies, sex-linked, genetic diseases, congenital anomalies, any other abnormalities or diseases as may be specified in the Act.^{lvi} The Act has provisions which list all offences and their penalties that can be committed under this Act. People who contravene the provisions of this Act are liable to serve prison and fine.^{lvii}

In the year 2009, the Right of Children to Free and Compulsory Education Act was passed by Indian Parliament. The basic aim of this Act is to outline the provision of quality education for all children between the age group of 6-14 as introduced by the Constitution in 86th Amendment.^{lviii} The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools.^{lix} The Right to education of persons with disabilities until 18 years of age is laid down under Disabilities Act.^{lx} Beating, abusing, physical and mental torture faced by the students in schools is one of the reasons for the high dropout rate. The National Education Policy, 1992 clearly states that corporal punishment should be firmly excluded from the education system.

Recently, the National Food Security Act, 2013 was passed by both houses of Parliament, has now considered as a landmark. Perhaps this legislation is the largest food security programme in the world. This Act is indeed an important effort to ensure that majority of population in India has access to adequate quantity of food at affordable prices. It proposes to over 75% of the rural population and 50% of the urban population.^{lxi} The Act reveals that subject to the provisions contained, every child up to the age of 14 years shall have the nutritional needs as per clauses (a) and (b) of section 5.^{lxii} Moreover, the state government shall, through the local anganwadi, identify and provides meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional standards specified in Schedule II.^{lxiii}

Worthwhile to mention here that the Protection of Children from Sexual Offences Act, 2012 is another Act passed by Parliament having provisions for the protection of children from sexual abuse and exploitation. This is for the first time such independent special legislation has been passed to address the sensitive issue like sexual offences against children. Otherwise such offences are covered by different sections of Indian Penal Code. This Act provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. This Act provides stringent punishments, which have been graded as per the gravity of the offence. The Act provides for the establishment of special courts for trial of offences under the Act.^{lxiv} The media has been barred from disclosing the identity of the child with the permission of the special court.^{lxv} To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, they will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or the nearest hospital within 24 hours of the report. The National and State Commission for the Protection of Child Rights have been made the designated authority to monitor the implementation of the Act. It is important to mention here that Information Technology (Amendment) Act, 2008 also inserted Section 67A and Section 67B in Chapter XI dealing with offences. Both these Sections provide provisions regarding publishing and transmitting of material containing sexual explicit Act. While dealing with Children section 67B lays down:

Whoever, publishes or transmits or causes to be published or transmitted material in any doctrine form which depicts children engaged in sexually explicit act or conduct; or creates text digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manners; cultivates entices or induces children on online relations; facilitates abusing children online, records in any electronic form own abuse or that of others pertaining to sexually explicit act with children shall be punishable with imprisonment five years / seven years and also with fine which may extend to ten lakh rupees.

Thus, pertinent to mention here that there are various other legislations which aims at protection of the rights of children under the Indian Legal System. Some of the other important special enactments are; Apprenition Act 1961, Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Child (Pledging of Labour) Act 1933, Indian Contract Act 1872, Inland Steam-Vessels Act 1917, Merchant Shipping Act 1958, Mines Act 1952, Motor Transport Workers Act 1951, Plantation Labour Act 1951, Shops and Establishment Acts, Children Act 1960, Code of Criminal Procedure 1973, Child Marriage Restrain Act 1929, Customs Act 1962, Press and Registration of Books Act 1867, Probation of Offenders Act 1958, Young Persons Harmful Publication Act 1956, Indian Evidence Act 1872, Indian Majority Act 1875, Special Marriage Act 1954, Infants Relief Act 1874, Partnership Act 1932, Specific Relief Act 1963, Transfer of Property Act 1872, Civil Procedure Code, 1908, etc. has been providing special protection to children.

Besides these enactments, the major policies and legislations formulated in the country to ensure child rights and the improvement in their status includes; National Policy for Children, 1974, National Policy on Education 1986, National Policy on Child Labour, 1987, National Nutrition Policy, 1993, National Health Policy, 2002, National Charter for Children 2004,

National Plan of Action for Children, 2005. Thus, the Government of India is addressing the protection rights of children in India within the framework of the MDG's.

JUDICIAL ATTITUDE TOWARDS RIGHTS OF CHILDREN:

During recent years the role of Indian judiciary and the scope of judicial interpretation have expanded remarkably. The role of judiciary in India has been quite significant in promoting the child welfare. In fact the judiciary promotes public interests by rendering help to those who are unable to approach the courts because of their poor socio-economic conditions. In one of the important case before this, i.e. People Union for Democratic Rights vs. Union of India,^{lxvi} the Supreme Court considered the meaning and scope of the phrase 'hazardous employment'. In the instant case the basic question before the court was whether the employment of children in the construction work amounts to employment in hazardous concern and was it violated the Employment of Children Act, 1938. The court held that construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. In this case, Justice Bhagwati observed:

“There can be no doubt that notwithstanding the absence of specification of construction industry in the schedule to the Employment of Children Act, 1938, no child below the age of 14 years can be employed in construction work and Union of India as also every state government must ensure that the Constitutional mandate is not violated in any part of the country.”^{lxvii}

Even in Salal Hydro Project vs. Jammu and Kashmir,^{lxviii} the court has reiterated the principle that the construction work in hazardous employment and children below 14 years cannot be employed in this work. In Bandhua Mukti Morcha vs. Union of India,^{lxix} the petitioner in Public Interest Litigation argued on behalf of the children below the age of 14 years that the employment of children by various carpet weavers in Varanasi, Mirzapur etc. in violation of Article 24. In the case it was observed by the court that child of today cannot develop to be responsible and protective member of tomorrow's society unless and until environment which is conducive and fruitful to his social physical health direct to be given like; compulsory education, periodical health checkup, nutrient food, entrust the responsibilities for implementation etc.

Thus, the judiciary has almost brought a revolution in the life of child workers in India. It has always remembered to expand and develop the law so as to respond to the hope and aspiration of people who are looking to the judiciary to give life and content to law. In the case of Labourers Working on Salal Hydro Project vs. State of J&K,^{lxx} the court observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction work. It further observed that whenever the Central Government undertakes a construction project, the government should provide that children of construction, workers living near the project site should be given facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself because a useful member of the society and to play a constructive role in the socio-economic development of the country.^{lxxi} It is obvious further that the importance of child welfare cannot be over

emphasized because the welfare of the entire community, its growth and development, depend on the health and well-being of its children.^{lxxii}

The Supreme Court in the case of M.C. Mehta vs. State of Tamil Nadu,^{lxxiii} looked at children employed by match factories and set forth condition of their employment. The court held that child cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of employment of Children Act, 1938. They can however be employed in packing process but should be done in areas away from the place of manufacturing to avoid exposure to accident. The court further ordered that minimum wages, education, recreation, medical care, compulsory insurance, basic diet of children must also be ensured by the state government as well.

In Sheela Barse vs. Union of India,^{lxxiv} the court observed that children's programme should find a prominent part in our natural plans for the development of human resources, so that our children grow up to become robust citizen, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by the security. In Mohini Jain vs. State of Karnataka,^{lxxv} the court observed that the government must divert its policies towards the development of child. In J.P. Unni Krishnan vs. State of A.P.,^{lxxvi} held that the citizens of this country have the fundamental right to education and the said right flows from Article 21 of the Constitution. Every child of this country has the right to free education until he completes the age of 14 years. Thereafter, his/her right to education is subject to limits of the economic capacity and development of the state. Bandhu Mukti Morcha vs. Union of India,^{lxxvii} case also observed that child below 14 years is entitled to have facilities like education, health, sanitation, nutritious food etc.

The court in number of cases accepts Public Interest Litigation and tries to give relief. A very positive development in this direction is the decision of the Supreme Court in the case of Unni Krishnan J.P. vs. State of A.P.,^{lxxviii} where the right to free education upto the age of 14 years is considered as a fundamental right within the meaning and scope of Article 21 of the Constitution of India. The court held that right to education, understood in the context of Article 45 and 47 means every child of the this country has a right to free education until he completes the age of fourteen years and after the age of fourteen years the right to education is circumscribed by the limit of the economic capacity of the state and its development. In the case of Avinash Mehrotravs Union of India^{lxxix} a Public Interest Litigation was filed and the Hon'ble Supreme Court has expended the definition of education and gave a new meaning to education guaranteed under Article 21A of the Constitution. The court further observed that in view of Article 21A of the Constitution, it is imperative that the education which is provided to the children, in the primary school should be in much follow the bare minimum safety standards, in addition to compliance of National Building code of India. Particularly, fire safety measures in schools, proper trained staff, building specification, authorization only after proper inspection of school etc.^{lxxx} The Gwahati High Court in the case of Swapan Kumar Saha vs South Point Montessori High School^{lxxxi} held that overloading school bus is violative of the rights of school children to travel safely in school bus. School management is obliged to provide safe journey to children to and fro school.

Besides this the Apex Court also protected various other rights of the child. In this regard while dealing with sexual exploitation, the Supreme Court in Vishal Jeet vs. Union of India,^{lxxxii} observed that it is highly deplorable and heart rendering to note that many poverty

stricken children and girls in the prime age of youth are taken to flesh market and forcible pushed into flesh trade which is being carried on in utter violation of the cannons of morality, decency and dignity of mankind. Further in *Gaurav Jain vs. Union of India*,^{lxxxiii} regarding protection of basic human rights and dignity of life of the children and prevention of sexual abuse of those female children of the fallen women. The Supreme Court has pronounced its landmark judgement and held that the right of the children in the concern of the society so that the fallen women surpass trafficking of her person from exploitation, equally children have the right to equality of opportunity, dignity and protection, rehabilitation by society with both hands open to bring them into the main-stream of social life without pre-stigma affixed on them. The Bombay High Court in the case of the Public at Large vs State of Maharashtra^{lxxxiv} took a *sue moto* notice after a newspaper article published that minor girls are illegally confined, sexually assaulted and forced to be prostitutions. The Supreme Court reacted very strongly against the High Court decision of reducing the sentence of a rape convict from ten years imprisonment to three years on the ground of the accused himself being a young person.

Thus the judicial response in cases of heinous crime of rape on minor, helpless girls of tender age is very strict as the court is of the view that the sentence should be strict, as the object of the law is protection of society and deterring the criminals. The Supreme Court in the case of *Sakshi vs Union of India*^{lxxxv} gave directions regarding the manner of holding trial in child sexual abuse cases. The court held that a screen or some such arrangement may be made where the victim or witnesses don't see the body or the face of the accused, the question put in cross examination on behalf of the accused in so far as they relate directly to the incidents should be given in writing to the presiding officer, who may explain it to the victim in non embarrassing manner. The victim of child sexual abuse while giving testimony should be allowed sufficient breaks as and when required.^{lxxxvi} Thus, *Ram Kishan Aggarwal vs. State of Orissa*,^{lxxxvii} *Phul Singh vs. State of Haryana*,^{lxxxviii} *Bharwada Bhogin Bhai Harjibhai vs. State of Gujarat*,^{lxxxix} *Jagdish Prasad Sharma vs. State*,^{xc} *Veer Bahadur vs. State*,^{xcii} *State vs. Ramesh*,^{xcii} etc. are some of the examples of special and adequate steps to protect the child against sexual offences.

While dealing with the cases of traffic in children, the judiciary has interpreted the Indian Penal Code 1860, The Juvenile Justice (Care and Protection) Act 2000, The Indecent Representation of Women (Prohibition) Act 1986, etc. in detail. Besides various cases^{xciii} in *Gaurav Jain vs. Union of India*,^{xciv} the petitioner, a public spirited person (advocate) filed a PIL seeking appropriate directions to the government for the improvement of the plight of prostitutes, fallen women and their children. In the instant case the court held that it is the duty of government and all voluntary non-governmental organization to take necessary measures for protecting them from prostitution and rehabilitate them. Moreover other directions in this regard like marriage arrangement, housing facilities, legal aid, free counseling, rehabilitation, etc. must be provided. Thus, judiciary is working hard to curb child trafficking from its grass root level. Even the child pornography is the most heinous crime which occurs and has led to various other crimes such as sex tourism, sexual abuse of the child etc. Indian Penal Code 1860 as well as Information Technology Act 2000 provides protection from child pornography. Educational institutions have also performing their duties and social obligations in this regard to protect the children by imparting the social awareness and proper education to the children. Recently the Supreme Court in *Sampurna Behrua vs*

Union of India^{xcv} where a writ petition under Article 32 of the Constitution of India is filed, the court has been monitoring the implementation of the Juvenile Justice (Care and Protection of Children) Act 200. The Court has already passed several orders for Constitution of Juvenile Justice Boards under Section 4 of the Act and Child Welfare Committees under Section 29 of the Act in different States and Union Territories and most of the states and Union Territories have already taken steps to constitute the Juvenile Justice Boards and Chief Welfare Committees.

In the case of CEHAT vs. Union of India,^{xcvi} PIL was filed in Supreme Court by the health activists. In response to the petition, the court issued notices to the central and state governments to file replies to central government regarding cases of female sex determination. The Supreme Court directed state governments to take further steps to ensure the law and the Secretary Department of Family Welfare was directed to file an affidavit indicating the status of action taken. As human rights legislation, the Juvenile Justice (Care and Protection) Act 2000 is enacted. In Deepak Ravinder vs. State of Andhra Pradesh,^{xcvii} it was held that section 13 of the Juvenile Justice Act 2000, mandates the probation officer also, besides the parents of the juvenile under arrest about the arrest in order to obtain information regarding antecedents etc. of the juvenile to assist the Juvenile Justice Board for making the inquiry. Thus, the close observation of the cases reveals that the activism of Indian Judiciary to protect the children from various kind of violations. The Supreme Court made laudable directions and suggestions in various situations to protect the basic fundamental human rights of poor children. The close observation further shows that the judiciary has always given a lead to save the child from exploitation and improves their conditions.

SUM UP:

Thus, as evident from the observations that the issue of the rights of children is prevailing on a large scale all over the world including India. There are large number of children who are in need of care and protection but biggest challenge in understanding the magnitude of child right violation and its prevention, is that a large number of cases go unreported because of societal pressure. After independence the right based approach to the development of child has brought massive changes in governmental policies and legislature. Various international instruments including United Nations recognize the importance of the rights based approach and aims to integrate it into their future efforts. This recognition has given the concept of development a new meaning and brought a paradigm shift in the children's right. As a consequential effect of this recognition presently right to education, child labour, sexual abuse, child commercial sex workers, sex trade, juvenile victimology etc are the areas to protect the vulnerabilities that can't be ignored. In fact law participated by way of mainly three manners i.e., provision, protection and participation. These dimensions cover the welfare aspects by way of treating the neglected children, treatment of girl, prostitutes, trafficking, free and compulsory education, child health, food security etc.

More recently some legislative measures such as Commission for the Protection of Child Rights Act, 2005, Juvenile Justice (care and Protection of Child) Act 2000, The Right of Children to Free and Compulsory Education Act, 2009; Prevention of Offences against Child Bill, 2009, Atrocities against the Women and Child Act, 2006 etc. have been brought by the

government. The 86th Constitutional Amendment Act passed by the Indian Parliament added Article 21 to the Part III of the Constitution where by making education a fundamental right. The passing of special law on Sexual Offences i.e., the Protection of Children from Sexual Offences Act, 2012^{xcviii} has also added a new chapter. There are almost 250 Centre and State legislations are available to deal with the welfare of children. But the lacuna is in their implementation. The loopholes in the existing legislations also need to be plugged for the effective enforcement.

The scrutiny of judicial cases shows the response of Indian Judiciary towards the rights of children. The cases cover wide range of issues which include education, sexual abuse, child labour, trafficking and various human aspects of rights violations. It is pertinent to mention here that most of the legislations framed with respect to children are to achieve either a target or at a time when a critical report had to be submitted.^{xcix} Thus to conclude, the children need special protection because of their tender age, physique and mental faculties. They are a “supremely important national asset” and the future well-being of the nation depends as to how children grow and develop.

Endnotes:

- i Mahandra Gaur, *The Child Abuse – A Reality* (2008); See *Preface*
- ii *Ibid.*
- iii S.N. Jain, *Child and the Law* (1979) at p4.
- iv Such as the age for school admission, age of marriage, age for casting vote, age for adulthood, age for joining services and age to enter into employment.
- v For more details see United Nations Convention on Rights of the Child, Article 1.
- vi India has always recognized the category of person below the age of 18 years as district legal entity.
- vii For more details see Oxford English Dictionary (2007) at p. 397.
- viii The Factories Act, 1948 Sec. 2 (1)(c).
- ix *Ibid.*, See Section 1 (2)(ii)
- x The Child Marriage Restraint Act 1929 ; See Section 2(a), subs, by Act 2 of 1978, Sec. 2 (w.e.f. 2nd October, 1978).
- xi The Juvenile Justice (Care and Protection of Children) Act 2000; See Section 2(d).
- xii The Indian Penal Code, 1860; See Section 83.
- xiii The Indian Child Welfare Act, 1978
- xiv The Immoral Traffic (Prevention) Act, 1956; See Section 2(aa).
- xv Mangold, S.V., *Transgressing the Border between Protection and Empowerment for Domestic Violence Victims and older children: Empowerment as Protection in the Foster Care System*, (2002), p. 69.
- xvi *Save the Children* 1923, which was subsequently, replaced the League of Nations in 1945.
- xvii See Declaration of the Rights of the Child, 1959; for more details see Resolution No. 1386 Section 14.
- xviii Nuzhat Parveen Khan, *Child Rights and the Law* (2012) at p 12
- xix N.S. Sreenivasulu, *Human Rights: Many Sides to a Coin*, (2008) p. 54.

-
- xx See The Constitution of India, 1950; Article 15(3) which lays down that nothing in this article shall prevent the state from making any special provision for women and children.
- xxi Francis Coralie vs. Union Territory, Delhi AIR 1981 SC 746.
- xxii AIR 1978 SC 597.
- xxiii Also see Paschim Banga Kheth Mazdoor Samiti Vs. State of West Bengal, AIR 1996 SC 2426; Consumer Education and Research Center vs. Union of India, AIR 1995 SC 1922.
- xxiv This Article was inserted by the Constitutional 86 (Amendment) Act, 2002.
- xxv AIR 1993 SCC 645.
- xxvi See also Mohini Jain vs. State of Karnataka, AIR 1992 SC 1858.
- xxvii D.D. Basu, The Constitution of India, (2004), p. 445.
- xxviii See The Constitution of India, 1950; Article 39(f).
- xxix Inserted by The Constitution (86th Amendment) Act, 2002.
- xxx For more details see The Constitution of India, 1950; Article 51-A (k).
- xxxi See The Indian Penal Code, 1860; Section 82
- xxxii *Ibid.*, Section 83.
- xxxiii *Ibid.*, Section 315
- xxxiv *Ibid.*, Section 316
- xxxv *Ibid.*, Section 305
- xxxvi *Ibid.*, Section 317
- xxxvii *Ibid.*, Section 361
- xxxviii *Ibid.*, Section 363A
- xxxix *Ibid.*, Section 366A also see provisions dealing with slavery or to satisfy the unjust etc. under section 367 to 369, Indian Penal Code, 1860.
- xl *Ibid.*, Section 372
- xli The Guardians and Wards Act 1890; Section 4(1).
- xlii *Ibid.*, Section 7(1)(2).
- xliii *Ibid.*, Section 24.
- xliv The Factories Act, 1948; See Section 2(c).
- xlv *Ibid.*, See Section 23, Section 27 and 48(1).
- xlvi *Ibid.*, See Section 23, Section 68, 71, 73.
- xlvii The Bonded Labour System (Abolition) Act, 1976; See Section 10.
- xlviii The Child Labour (Prohibition and Regulation) Act 1986; Section 3.
- xlix The Immoral Traffic Prevention Act, 1986; Section 5A.
- l The Juvenile Justice (Care and Protection) Act, 2000; Section 4(1).
- li *Ibid.*, Section 18(1).
- lii *Ibid.*, Section 21(1).
- liii *Ibid.*, Section 24.
- liv The Prohibition of Child Marriage Act, 2006; Section 16.
- lv The Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Section 3A.
- lvi *Ibid.*, Section 3B.
- lvii *Ibid.*, Section 23.
- lviii See The Right to Free and Compulsory Education Act, 2009; Section 3(1).
-

-
- lix The Right to Free and Compulsory Education Act, 2009; Section 8(a)(1).
 lx *Ibid.*, Section 3(2)(1).
 lxi See The National Food Security Act, 2013; Section 3(1) to Section 3(3).
 lxii The National Food Security Act, 2013; Section 5.
 lxiii *Ibid.*, Section 6.
 lxiv The Protection of Children from Sexual Offences Act, 2012; Section 28.
 lxv *Ibid.*, Section 23(2).
 lxvi AIR 1982 SC 1473.
 lxvii *Ibid.*
 lxviii AIR 1984 SC 177.
 lxix AIR 1984 SC 802
 lxx AIR 1984 SC 177.
 lxxi *Ibid.*
 lxxii Lakshmi Kant Pandey Vs. Union of India, AIR 1992 SC 118.
 lxxiii AIR 1991 SC 417.
 lxxiv (1986) 3 SCJ 423.
 lxxv AIR 1992 SC 767.
 lxxvi AIR 1993 SC 2178.
 lxxvii AIR 1997 SC 2218.
 lxxviii AIR 1992 SC 1858.
 lxxix (2009) 6SCC 39
 lxxx *Ibid.* also Rohit Singhal vs Principal; Jawahar Navodhaya Vidyalaya(2003)1SCC 687
 lxxxi AIR 2008 (NOC) 236 (Guwahati)
 lxxxii AIR 1990 SC 1413.
 lxxxiii AIR 1997 SC 3021.
 lxxxiv 1997(4)Bom CP 17
 lxxxv AIR 2004 SC 3566
 lxxxvi also see Sideshwar Ganguly vs State of West Bengal AIR 1958 SC 143; Rameshwar Kalyan Singh vs State of Rajasthan AIR 1952 SC 54
 lxxxvii 1976 SCC (Cri.) 244.
 lxxxviii 1980 SCC (Cri.) 1.
 lxxxix 1983 SCC (Cri.) 728.
 xc 1995 Cri.LJ 2501.
 xci 1996 Cri.LJ 632.
 xcii 1998 Cri.LJ 4233.
 xciii See Public at Large vs. The State of Maharashtra, 1997 (4) Bom CR 171; Prenana vs. State of Maharashtra, (2003) 2 Bom. LR 562; Vishal Jeet vs. Union of India, AIR 1990 SC 1413; Bandhua Mukti Morcha vs. Union of India, 1991 SCR (3) 524.
 xciv AIR 1997 SC 3021.
 xcv (2011) 15SCC 232
 xcvi AIR 2001 SC 2007.
 xcvii 1991 Cri.LJ 595.
 xcvi The Criminal Law Amendment (CLA) Act, 2013 received the President's assent on 2nd April, 2013. The CLA Act repeals the Criminal Law Amendment Ordinance, 2013 and has come into force from 3rd February, 2013. The CLA Act amends the
-

Protection of Children from Sexual Offences Act, 2012, the Indian Penal Code, The Code of Criminal Procedure, 1973, and the Indian Evidence Act, 1872. Section 29 of the CLA Act amends Section 42 of the POCSO Act and inserts a new Section 42A.

xcix The Delhi rape case is an example. In the instant case on 16 December 2012 a female was beaten and [gang raped](#) in [Delhi](#). She died from her injuries thirteen days later, despite receiving treatment in India and Singapore. The incident generated international coverage and was condemned by the [United Nations Entity for Gender Equality and the Empowerment of Women](#), who called on the [Government of India](#) and the [Government of Delhi](#) "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure." Public protests took place in Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country.
