



## Child Rights: Constitutional, National and International Framework: A Judicial Analysis

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### Abstract

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.: 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. The aim of this study is to critically evaluate how effectively the child rights violation can be prevented and to 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. They are abandoned. They do not get a chance to step in a school. They are left to fend for themselves on the streets. They suffer from many forms of violence. They do not have access to even primary healthcare. They are subjected to cruel and inhumane treatments every day. They are children – innocent, young and beautiful – who are deprived of their rights. In the history of human rights, the rights of children are the most ratified. The United Nations Convention on the Rights of the Child (UNCRC) defines Child Rights as the minimum entitlements and freedoms that should be afforded to every citizen below the age of 18 regardless of race, national origin, color, gender, language, religion, opinions, origin, wealth, birth status, disability, or other characteristics. rights encompass freedom of children and their civil rights, family environment, necessary healthcare and welfare, education, leisure and cultural activities and special protection measures. The UNCRC outlines the fundamental human rights that should be afforded to children in four broad classifications that suitably cover all civil, political, social, economic and cultural rights of every child.

**Keywords:** Child Rights, Constitutional Framework/provision National International Rights to Education U.N.Convention of Child Rights, Abuses, Protection Constitutional Remedies etc

### Introduction

Nature has provided some inherent rights to every human being including children. These fundamental rights bestowed in human being from the very inception. Human being is endowed with rights since the stage of foetus. Foetus in the mother womb is the starting point since then human being is guaranteed certain basic rights. These rights are intrinsic in every one. State cannot give or nullify these rights, which are inherent. State has to recognize and guarantee these rights. Millions of children around the world are exploited, abused, and discriminated against. These children include child laborer, children affected by armed conflicts, sexually exploited children, children in conflict with the law or in the care of the state, as well as children living on the streets, coping with disabilities, or suffering from discrimination because of their religious or ethnic-minority status. Children were recipients of welfare measures. It was only during the twentieth century the concept of children's rights emerged. The rights approach is primarily concerned with issues of social justice, non-discrimination, equity, and empowerment. It is because of the unique vulnerability of children that their rights are of

priority concern within Canada's foreign policy. Canada played a key role in the negotiations that led to the adoption of the United Nations Convention on the Rights of Child in, 1989. The United Nations has designated November 20 as Universal Children's day.

### Meaning of Child

The Convention on the rights of the child 1989 (CRC) defines the term child to mean every human being below the age of eighteen years unless under the law applicable to the child, majority to be attained earlier A nation's children are a "supremely important national asset", and the future well-being of a nation depends upon how its children grow and develop. It is the duty of the state to look after a child to (or "intending to") ensuring full development of its personality. To achieve this goal, a state must grant certain rights to the children. In India, rights of citizens including that of children have been directly or indirectly provided for by the Constitution of India. We shall first discuss in brief, the United Nations Conventions on Rights of the Child (hereinafter, CRC), 1989 to which India is a signatory.

### Child Definition

In India, the Census of India and the Constitution of India defines persons below the age of fourteen as children. The Children Act defines child as a person who has not attained the age of 16 years if it is a boy or 18 years if it is a girl. The man whose age is 21 years and the woman whose age is below 18 is kept in the category of child.

### Aim to having children's rights

Children's rights aim to ensure that each child has the opportunity to reach their full potential. Children's rights stipulate that all children without discrimination should be able to develop fully, have access to education and health care, grow up in an appropriate environment, be informed about their rights, and participate actively in society.

### Objectives of the study

1. All persons below the age of 18 are children.
2. Childhood is a process through which every human being passes.
3. Children have different experiences during childhood.
4. All children need to be protected from abuse and exploitation.

### Children Needs to Special Attention

1. Children are more vulnerable than adults to the conditions under which they live.
2. Hence, they are more affected than any other age group by the actions and inaction of governments and society.
3. In most societies, including ours, views persist that children are their parents' property, or are adults in the making, or are not yet ready to contribute to society.
4. Children are not seen as people who have a mind of their own, a view to express, the capacity to make a choice and an ability to decide.
5. Instead of being guided by adults, their life is decided by adults.
6. Children have no votes or political influence and little economic power. Too often, their voices are not heard.
7. Children are particularly vulnerable to exploitation and abuse.

### Child Right Issues

The United Nations Convention on the Rights of the Child (CRC) represents a turning point in the international movement on behalf of child rights. This comprehensive document contains a set of universal legal standards or norms for the protection and well-being of children. Child soldiers, Juvenile life without Parole, The Right to Education are the major child right issues

### Conventions on Rights of the Child and India

Adopted by the United Nations in 1989, the CRC is an international agreement legally binding on the parties signatory to it. It has incorporated in its various articles rights of children without any discrimination whatsoever. It was ratified by India on 11 December 1992. It has a preamble setting out different principles the CRC is built upon

#### Article 1

Everyone under 18 years of age has all the rights in this Convention.

#### Article 2

The Convention applies to everyone whatever their race,

religion, abilities, whatever they think or say, whatever type of family they come from.

#### Article 3

All organizations concerned with children should work towards what is best for each child.

#### Article 4

Governments should make these rights available to children.

#### Article 5

Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly.

#### Article 6

All children have the right to life. Governments should ensure that children survive and develop healthily.

#### Article 7

All children have the right to a legally registered name, and nationality. They have the right to know and, as far as possible, to be cared for, by their parents.

#### Article 8

Governments should respect children's right to a name, a nationality and family ties.

It is based on four basic principles:

1. Non-discrimination (Article 2)
2. Best Interest of the Child (Article 3)
3. Right to Life Survival and Development (Article 6)
4. Right to be Heard (Article 12)

### The provisions of the CRC have been categorized as:

**T I (Article 1-41):** It sets out the rights of children and obligations of governments. The rights can further be categorized as:

- **Survival Rights:** the right to life of child and access to basic necessities to existence such as adequate food, shelter, standard of living and medical requirements.
- **Development Rights:** the right to education, to practice the religion of own choice and cultural activities, freedom of thought and conscience, to play and leisure and to access to information
- **Protection Rights:** rights that protect children from abuses which may be consequential to several kinds of circumstances, such as children subject to procedures of criminal justice system, children in employment, children who are refugees, children who have undergone abuse or exploitation.
- **Participation Rights:** rights of children to participate in activities of the society, especially matters that may affect their life, to assemble peacefully and to join associations.

**T II (Article 42-45):** It contains provisions regarding implementation of the provisions of the CRC.

**T III (Articles 46-54):** It includes provisions for signing the convention by parties and rules and procedures thereafter for the purpose of ratification, enforceability, amendment, denouncement, etc. of the convention.

### Three Optional Protocols to the CRC have been introduced which are:

- Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography.
- Optional Protocol to CRC on the involvement of Children in Armed Conflict.
- Optional Protocol to the Convention on the Rights of

the Child on a Communications Procedure. As of now India has not signed the third optional protocol.

### **Impact of the Convention of the Child Rights**

A milestone in the international human rights legislation, the 'Convention on the Rights of the Child' has been instrumental in putting all the issues pertaining to children issues on the global as well as national agenda. In addition to this, it has extensively mobilized actions for the realization of the rights and development of children worldwide. It was not an overnight initiative that resulted in the adoption of the Child Rights. It took several years of movements and activism on shaping favorable, positive and constructive attitudes toward children, and also inciting actions to improve their well-being. The enormous efforts involved toward the implementation of the Convention, the significant amount of resources committed to this cause, and the overall effectiveness of the systems put in place for the execution process have a bearing on the success of child well-being outcomes. Over the last 20 or so years, implementation of the Convention and its effect on child well-being varied from country to country and from one region of the world to the other. Based on analysis, there has been outstanding progress at a global level in addressing the issues related to children. These include progress in access to services, reaching their fullest potential through education, enactment of laws that upholds the principle of the best interests of child, and child survival. Though a noteworthy progress has been achieved, yet in developing countries, particularly India, there is still a long way to go in realizing the rights of children. Though all the relevant rules and policies are in place, there is a lack in enforcement initiatives. As barriers, there are several factors that forbid effective implementation of the laws. Due to relatively low success in achieving concrete child development outcomes in India, the condition of underprivileged kids and underprivileged youth is harsh and needs urgent attention. There is a need to intensify efforts for children welfare at all levels to implement the rules and provisions of the Convention and contribute to create a world suitable for children.

### **International laws**

#### **1. UN Convention on the Rights of the Child**

India ratified the UN Convention on the Rights of the Child on 1992 and lists the following as the Rights of the Child,

- **The Right to Survival:** According to the convention, the Right to Survival includes the right to life, the attainable standard of health, nutrition and an adequate standard of living. It also includes the right to a name and nationality.
- **The Right to Protection:** According to the Convention, this right includes freedom from all forms of exploitation, abuse and inhuman or degrading treatment. This includes the right to special protection in situations of emergency and armed conflict. The aim is simple, to protect vulnerable children from those who would take advantage of them and to safeguard their minds and bodies.
- **The Right to Development:** This right includes the right to be educated, to receive support for development and care during early childhood and to social security. It also includes the right to leisure, to recreation and to cultural activities.

- **Right to freedom of thought and expression:** According to the Convention, the Right to Participation accords the child access to appropriate information and the freedom of thought and expression, conscience and religion.

### **Child Rights and the world**

People from across the world striving for social justice have often directed their efforts toward the most vulnerable in society—the children. From Princess Diana's charitable work on behalf of children to the efforts of activists like Grace Abbott and the youngest Nobel laureate in history—Ms. Malala Yousafzai, these famous children's right activists have put commendable efforts in helping improve the lives of the youngest citizens.

2014 Nobel Peace Prize awardees—Ms. Malala Yousafzai and Mr. Kailash Satyarthi have reminded us all of the need to keep on advancing in providing opportunities that has an important effect on all children. The opportunities are meant to be meaningful enough to allow them to learn and gain the mindsets and skills that would empower them to be free, develop themselves, their communities and the world.

Mr. Kailash Satyarthi's struggle to liberate children from child labour had cost him many life threats, including bullet wounds by those who exploit young boys and girls for economic gain. Wearing flak jackets, and armed with strong determination, he and his team raided many illegal factories and mines to rescue the children who are sold into servitude. It has been 30 years now since he started his movement. A movement that has one clear purpose—no child shall be a slave.

On the other hand, when one thinks of Ms. Malala Yousafzai, the first thing that pops in one's mind is education. The second is—education for girls. In 2009, when she was just 11, she wrote to BBC about the norm of banning female education under the Taliban regime in the Swat Valley (her hometown). Her article gained tremendous momentum worldwide. She started her fight for the education of girls at that small age and began to speak publicly and to the press, which caused her and her family receives constant death threats.

"I strongly feel that this is a big honor to hundreds of millions of the children who have been deprived of their childhood and freedom and education." – Mr. Kailash Satyarthi.

"I speak not for myself but for those without voice... those who have fought for their rights... their right to live in peace, their right to be treated with dignity, their right to equality of opportunity, their right to be educated." – Ms. Malala Yousafzai."

### **How to report a child abuse**

- first and foremost step to be taken for a child in distress is giving moral support to him or her. It is essential for children to be supported and brought back into their comfort zone if they have been subjected to abuse.
- ce may be contacted on their hotline number, i.e., 100 for immediate assistance. Thereafter, a complaint can be made with the Police by lodging a FIR at the nearest Police Station.
- Police, upon lodging of the FIR, starts the investigation if such cognizable offence as reported was committed under the jurisdiction of the Police Station where FIR was lodged.

- If the cognizable offence was not committed under the jurisdiction of the said Police Station, the police shall register a zero FIR and send it to the Police Station having jurisdiction over the matters of the place where the offence was committed. The Police Station with appropriate jurisdiction commences the investigation.
- Photographs or video clips or voice recordings of the child abuse may be taken as evidence and shared with Police in order to strengthen the case against the accused. Such kind of evidence shall not be circulated, transmitted or made available to anyone except the authorities or the court (for the purpose of proof) in cases relating to sexual offences against the children and identity of the victim shall not be disclosed to the public or unauthorized people.
- If it so happens the police station refuses to lodge an FIR or to record any information, a copy of such information shall be sent to the Superintendent of the Police or the Assistant Commissioner of Police in writing, along with the statement that the approached Police Station refused to lodge the FIR or record the information in question. A copy of the writing must also be sent to the Commissioner of Police, the Deputy Commissioner of Police and the Senior Police Inspector.
- Alternatively, ChildLine can be approached by dialing 1098 to report any child abuse and seek assistance. ChildLine India Foundation is the nodal agency of the Union Ministry of Women and Child Development acting as the parent organization for setting up, managing and monitoring the CHILDLINE 1098 service all over the country. It is toll-free and 24 hours accessible number.
- Various NGOs are working for the protection of rights of children; their help may be taken to secure the rights of children or to bring to justice the offenders who infringe such rights. Some of the reputed NGOs working for the welfare of children are HAQCRC, Cry, etc.
- After official reporting of abuse and lodging of FIR, the matter goes to competent court and case is initiated by the State against the accused.

#### **Constitutional provisions regarding rights of children**

The Preamble of the draft bill states that it is put into effect the Right to Free and Compulsory Education to all children in the age group of 6 – 14 years. The Constitution of India is the basic law of the country that includes the fundamental rights and directive principles for every citizen. The fundamental rights in the Constitution of India impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Fundamental rights if violated can be brought before the courts. Directive Principles lay down the guidelines the Government have to follow. If they are violated, they cannot be taken before the courts but because of judicial interpretation, many of the directive principles have now become enforceable through legal actions brought before courts. The Constitution in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) guarantees under the articles mentioned below, rights to the children of India:

#### **Part III:**

- **Article 14:** Citizens of India, including children, must be treated equally before law and must be given equal protection by the law without any discrimination or arbitrariness.
- **Article 15(3):** Discrimination is prohibited by the constitution. However, it shall not hold a ground to prevent the state from making special provisions for women and children for their benefit.
- **Article 21:** No person shall be deprived of his life or personal liberty without due process of law. A person has the right to adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.
- **Article 21A:** The State shall provide free and compulsory education to all the children falling in the age group of six to fourteen years in such manner as the State may, by law, determine.
- **Article 23:** Prohibits trafficking in human beings and beggar or any other form of forced labour.
- **Article 24:** Prohibits employment of children under the age of fourteen years in a factory, mine or in any other hazardous employment.

#### **PART IV:**

- **Article 39 (e):** The state shall thrive to ensure that the tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- **Article 39 (f):** The state shall ensure children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity. It must also be ensured that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 41:** The state is obliged to, within its economic capacity and development, secure provisions for educational opportunities and facilities.
- **Article 44:** The state shall make all possible efforts to secure a Uniform Civil Code for all the citizens, thereby implying a uniform code for the adoption of children.
- **Article 45:** The state shall endeavor to provide free and compulsory education to children until they attain they age of fourteen years.
- **Article 46:** It is the duty of the state to promote the educational and economic interests of weaker sections of the society with special care and therefore, the children therein.
- **Article 47:** The state is duty-bound to raise the level of nutrition and the standard of living and to improve public health, including that of children.
- **Article 51 (c):** International laws and treaties shall be respected by the state to every possible extent, including the CRC and its optional protocols, Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and Optional Protocol to CRC on the Involvement of Children in Armed Conflict.
- **Article 51 A (k):** 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.
- **Article 243G** provides for the institutionalization of child care by seeking to entrust programs of Women and Child Development to Panchayat (Item 25 of

Schedule 11).

**Constitutional Remedies when Rights of Children are Infringed**

If the above-mentioned fundamental rights are infringed, the appropriate courts may be approached. The constitution has provisions for constitutional remedies in article 32 and article 226.

- **Article 32:** A person has right to move to the Supreme Court to protect his fundamental rights. It is also a fundamental right.
- **Article 226:** A person may approach High Court by virtue of this article to get his rights protected, not necessarily fundamental rights.

**The courts, for the purpose of protecting the rights they are authorized to, may issue writs:**

- **Habeas Corpus:** literally translating to “you may have the body”, a person, whether or not a child, who is detained, whether in prison or privately, is directed to be produced before the court. If found that such detention was illegal, he is released.
- **Mandamus:** meaning ‘we command’, mandamus issued by Supreme Court or High Court orders the lower courts/tribunals/public authorities to perform a public or statutory duty which they are obliged to perform but have failed to do so.
- **Prohibition:** it is issued by the Supreme Court or the High Courts, to prohibit inferior courts under them from transgressing the limits or powers vested in them.
- **Certiorari:** it enables a superior court to quash an order already passed by the inferior court/tribunal/quasi-judicial authority.
- **Quo warranto:** it literally means by what right. It is issued to restrain a person from holding a public office he is not entitled to hold.

**The writs may be extended to the lower courts by the parliament.**

Since children are unable to access the legal system by themselves, a Public Interest Litigation may be filed in the Supreme Court or the High Courts by a public spirited individual or a non-governmental organization against the Central Government or State Government or any of their respective agencies by the virtue of A.32 and A.226 for protection of the rights of the Children.

**Other Legislations / Policies in India:**

Some of the important legislations and policies in India to safeguard the rights of children are:

- **Indian Penal Code, 1860:** The Indian Penal Code by its various sections specifically protects children and their rights. Some of these sections are:
- **S.83:** Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.
- **S.292 & 293:** Selling, distribution, publishing, public exhibition or circulation of obscene material such as books, magazines, drawings, paintings, etc. is prohibited under Section 292. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object

as is referred to in Section 292, or offers or attempts so to do, shall be punished more severely.

- **S.305:** Abetment of the commission of suicide of a person below the age of 18 years is punishable under this section.
  - **S.317:** Abandonment or exposure of a child for the purpose of abandonment by any of the parents or a person having the care of such child is a punishable offence.
  - **S.361:** This section deals with punishing offenders who kidnap a child (male if below 16 years of age and female if below 18 years of age).
  - **S.363A:** Kidnapping or maiming children for the purpose of begging has been stated to be a punishable offence under this section.
  - **S.366A:** Inducing of a minor girl under the age of 18 years to do any act that may force or seduce her to illicit intercourse with another person is punishable under S.366A.
  - **S.366B:** It is a punishable offence to import a girl under 21 years of age into India from a country outside India or from Jammu and Kashmir intending that she may be forced or seduced to illicit intercourse with another person.
  - **S.369:** Kidnapping a child under the age of 10 years with the intention to steal from such child is an offence.
  - **S.372 & 373:** Selling, buying or hiring a person under 18 years of age for the purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is a punishable offence.
  - **S.375:** A man is said to commit “rape” if has sexual intercourse with a woman with or without her consent when she is under the age of 16 years.
  - **S.376:** The section provides for stringent punishments if:
    - rape is committed by management or staff of Remand Home or any other place of custody established by law or children’s institution,
    - rape is committed upon a woman under 12 years of age,
    -
  - **Gang rape is committed.**
  - **S.376C:** When the Superintendent or manager of a remand home or any other place of custody established under law of ‘children’s institution’ induces or seduces a woman into sexual intercourse by taking advantage of his official position, he is entitled to stringent punishment under this section.
- These sections specifically protect the rights of children. Other sections applicable to punish offenders for a crime can also be invoked to protect the children against such offenders.
- **Guardians and Wards Act, 1890:** The act supersedes all the laws regarding guardianship of a child. It is a universal code specifically designed for Muslims, Parsis, Christians and Jews as their personal laws don’t allow full adoption but only guardianship.
  - **Child Marriage Restraint Act, 1929 (Amended in 1979):** It restrains child marriage until the minimum age, i.e. 21 for male and 18 for female, has been attained by them. It applies to the people of all the religions.
  - **Immoral Traffic (Prevention) Act (Amended in**

**1986), 1956:** This act with respect to children deals with person(s) who procure or attempt to procure any child for prostitution or person(s) who are found with a child in a brothel (it is presumed child has been detained for the purpose of prostitution) and punishes them. It also provides for the due care of rescued children.

- **The Women's and Children's (Licensing) Act, 1956:** The Act was enacted with an object to protect women and children from exploitation and inhuman activities going on in institutions. It mandates the institutions for women and children to get a license from the licensing authority before establishing or maintaining the institution.
- **Probation of Offenders Act, 1958:** This act with the help of the Juvenile Justice Act, 2000 tries to ensure that no person under the age of 21 years faces imprisonment.
- **National Policy for Children, 1974:** It is the first written policy for the children in India. It aims at providing better enforcement of constitutional rights of the children along with those granted by the CRC. Some of the provisions include free education, comprehensive health and nutritious plans, etc.
- **Bonded Labour System (Abolition) Act, 1976:** The act aims at eradicating the bonded labour system in India which exploits the weaker sections of society, especially children.
- **Child Labour (Prohibition and Regulation) Act, 1986:** This act regulates the working conditions for children in employment and prohibits working of children in certain kinds of employments.
- **National Policy on Education, 1986:** The policy is extensive in nature and elementary; university and adult level education, all fall under its scope. It tries to remove inequality by making special provisions for women and other weaker sections of society such as Schedule Castes, Schedule Tribes, etc.
- **National Policy on Child Labour, 1987:** The act endeavors to eradicate child labour from Indian society wherever necessary.
- **Juvenile Justice (Care and Protection of Children) Act, 2000:** This act is one of the important acts in India for the children in need of care and protection and also children in conflict with the law. It requires that the state provides free legal support to the juveniles, and proper care and protection is provided to those in need. It also calls for a child-friendly approach in adjudication and disposition of matters involving children.
- **The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000:** The main objective of the Act is to regulate and prevent the pre-natal sex determination in order to prevent female foeticide.
- **National Health Policy, 2002:** This is the second National Health Policy, after the first in 1983. The policy provides for Universal Immunization Programmes, health care related education in schools and free regular health checkups at schools etc.
- **Protection of Children from Sexual Offences Act, 2012:** The act aims at punishing the offenders who are guilty of sexual offences against children below the age

of 18 years of age. It also lays down procedures for the trial, such as, the name of child victim shall not be disclosed, proceedings of the case are to be conducted in court with cameras recording the trial, accused is not to be kept in-front of the child victim during examination or cross-examination, etc.

#### **Some more laws and policies in India for children can be found in**

1. Factories Act, 1948 (Amended in 1949, 1950 and 1954)
2. Hindu Adoption and Maintenance Act, 1956
3. Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960
4. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987
5. Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989
6. Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992
7. National Nutrition Policy, 1993
8. Transplantation of Human Organ Act, 1994
9. Information Technology Act, 1996
10. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002
11. National Charter for Children, 2003
12. National Plan of Action, 2005
13. Prohibition of Child Marriage Act, 2006
14. Juvenile Justice (Care and Protection of Children) Act (Amendment, 2006), 2006
15. The Right of Children to Free and Compulsory Education Act, 2009
16. The Child Labour (Prohibition and Regulation) Amendment Bill, 2012
17. The National Policy for Children, 2013
18. Juvenile Justice Rules Gazette Notification, 2016
19. The Rights of Persons with Disabilities Bill, 2016

#### **Landmark Judgements**

- **P. Unni Krishnan vs. State of Andhra Pradesh:** Right to education, in this case, was included under the right to life by the Hon'ble Supreme Court of India. The court observed that 'education is a preparation for a living and for life' and thereafter concluded with the statement 'we hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.'
- **C. Mehta vs. State of Tamil Nadu:** Employers of children in matchsticks and crackers factory were punished with fine of Rs.20,000 for every child employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act. Such children were directed upon discontinuation of their employment to be assured education in a suitable institution by the state government.
- **Bandhua Mukti Morcha vs. Union of India:** Bandhua Mukti Morcha is an organisation that works for the release of bonded labourers in India. They sent a letter to the Supreme Court regarding bonded labour going on in Faridabad district of Haryana in 'inhuman and intolerable conditions. The court converted the letter into a writ petition, and after confirmation by the

investigating team appointed by the court of the existence of the said bonded labour system, the court directed:

- The State Governments to constitute Vigilance Committees in each district and its sub-divisions.
- The District Magistrate to take up as top priority the task of identification of bonded labour.
- The State Government to concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose.

**Lakshmi Kant Pandey vs. Union of India:** The petition was initiated by a letter by Lakshmi Kant Pandey accusing the social organizations and voluntary agencies involved in work of offering Indian children for adoption to foreign parents of malpractices. The Supreme Court after due investigation laid down certain safeguards to be followed during inter-country adoptions:

- Every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognized or licensed by the government of the country in which the foreigner is resident.
- The Government of India shall prepare a list of social or child welfare agencies recognized or licensed for inter-country adoption.
- The social or child welfare agency sponsoring the adoptive foreign parent must conduct a home study through a professional worker. The home study report should contain particulars, such as the personality of husband and wife, description of the home, relationship with community, accommodation for the child, etc.
- Progress reports must be sent to the concerned social or child welfare agency in India in respect of the child until the adoption is affected by the social or child welfare agency sponsoring the adoptive parent.
- Only social or child welfare agencies recognized or licensed by the government of India can process an application from an adoptive foreign parent. Private adoptions conducted by unauthorized individuals or agencies are prohibited.
- Central Adoption Resource Agency (CARA) suggested to be established to act as a clearing-house for information regarding the children available for inter-country adoption.
- The social or child welfare agency which is looking after the child selected by a prospective adoptive foreign parent may legitimately receive maintenance expenses from such adoptive parents, not exceeding Rs. 60/- per day. Unreasonable demands made by social or child welfare agencies as maintenance charges and medical expenses is not appreciated and requires curtailment.
- An application for adoption by adoptive foreign parents is to be placed before the High Court or the District Court, and the same is to be scrutinized by a Scrutinizing Agency, such as the Indian Council of Child Welfare or the Indian Council for Social Welfare. Appropriate orders will be passed by the Court based on the report of the Scrutinizing Agency.
- In case the biological parents of the child being given in adoption are known, they should be helped to understand all the implications of adoption, including

adoption by a foreigner and prohibition on them contacting the child in future. A period of three months must be given to the biological parents to reconsider their decision. Once the decision is taken and not reconsidered, the decision to give the child in adoption is irrevocable and the procedure for adoption may commence.

- Great care has to be exercised in permitting the child to be given in adoption to foreign parents to avoid abandonment of the child by the adoptive parents, moral or sexual abuse or forced labour of the child, and to avoid the child to be placed in a worse situation than that in his country.
- This judgment mainly relates to destitute or abandoned children offered for adoption, and not to children living with biological parents.

### **Suggestive Measures -Rights of the children in India**

Although we all have read and heard about human rights but people talk lesser about children's rights because people think that they are children, so what kind of rights children can have? But for the kind information of such ignorant persons we made this article so that rights of the children can also be known by parents and other civilians. The declaration related to the rights of children is the most obvious and comprehensive in the International Human Rights law. In the article 54 of the International Human Rights, the rights like financial, social and political related to children are given together.

#### ➤ **Prohibition of Child Marriage Act 2006**

Prohibition of Child Marriage Act 2006 in India was implemented from November 1, 2007. UNICEF has defined the marriage of girls before the age of 18 years as a child marriage and for boys this age is 21 years and its violation is considered as the violation of human rights. The government of India passed The Child Marriage Act 2006 to prevent the child marriages in India. Child Marriage Restraint Act, 2006 was brought in place of Child Marriage Restriction Act -1929.

#### ➤ **Child Labor (Prohibition and Regulation) Act, 1986**

The most controversial legislation related to children's right in India is "Child Labor (Prohibition and Regulation) Act, 1986. This Act has clearly mentioned that how children can work and where they can't work?

#### ➤ **Right to Education**

Article 21-A has been included as a fundamental right in the Indian Constitution by the 86th Constitution Amendment Act, 2002, in which provision has been made to provide free and compulsory education to all children under the age group of 6-14 years. This law compels all the government aided/private schools in India to provide 25% seats to the children of economically backward sections of the societies. 86th constitutional Amendment – Right to Education, is a fundamental right. It was after a long struggle that the 86th constitutional amendment to make the right to education as a fundamental right in 2002 was made. The State laws have not yet been drafted. The Government of India has prepared a draft bill on the Right to Education Bill, 2005, seeks to give effect to the 86th constitutional Amendment.

The father of modern education—John Amos Comenius

proposed – “all persons should be educated, so we could have peace in the world”. Visionaries of the world understood that peace meant guaranteeing every person certain rights that are conditional for humanity—education being one of the most important. The addition of the Right to Education (RTE) in the Universal Declaration of Human Rights in 1948 was the beginning of a remarkable expansion of educational opportunities around the world. The parliament of India enacted the Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE) on August 2009. The same got enforced on April 1st 2010. As per the act, education is a fundamental right of every child who is between 6 and 14 years old. The act also states that until the completion of elementary education, no child shall be held back, expelled or required to pass a board examination. There is also a provision for special training of school drop-outs to bring them up to par with students of the same age. As a charity for child rights, Smile Foundation has been providing education to marginalized children in poor rural and urban communities in 25 states of the country. Its flagship programme - Mission Education exemplifies the global struggle for universal education. The programme has succeeded in bringing more than 200,000 children to school since its start in the year 2002. Underprivileged kids lag at all stages of education. When earning a livelihood and taking care of the members of the family becomes a primary matter of concern in one's life, education stands a little or, very often, no chance of pursuance. For the millions of underprivileged people in India, education is a high-priced luxury, and this negative outlook continues on with every new generation. Poverty damages childhood with significant effects on a child's physical and mental health, as well as educational achievement. It limits the expectations of the child's ability to perform well in school, constantly reminding him/her of the minuscule chance he/she has to overcome adversity and poverty. With its development interventions that are focused on social welfare of children, Smile Foundation has raised those expectations among the hardest-to-reach children. Recent mark-sheets of the students in all ME centers has shown Smile Foundation primary school students outperforming their peers, with a very high passing rate. Last year, 51% of the total beneficiaries in Mission Education centers across India were girls. Also, 87% of the total eligible students are successfully mainstreamed in private and government schools.

#### ➤ **Child Trafficking**

According to UNICEF, any person under the age of 18 is recruited, transported, transferred or sheltered for the purpose of exploitation within or outside the country, then it falls under the crime of child trafficking.

#### ➤ **The Protection of Children from Sexual Offences Act (POCSO Act) 2012**

There are 53% of children in India face child sexual abuse in some form. Therefore, in India this act has been implemented for both male and female. This law prohibits the display of pornography in front of the children and any kind of involvement of the children in pornographic content and even storage of pornography related to children is also an offence. This act makes child sexual abuse a punishable offence.

#### ➤ **Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (Care and Protection of Children) Amendment Bill 2015 has been passed by the Rajya Sabha. It was introduced in Parliament in 2014 after public outrage because one of the offenders in the 2012 gang rape case was a few months short of 18 years of age. The bill had already been passed by the Lok Sabha. Now the age of a Juvenile is reduced to 16 years.

#### Conclusion

Children, owing to their developing mind are vulnerable to the environment they are in. It is of utmost importance that such environment is made suitable for their growth and development, regardless of whether such child is in conflict with law or not and be given adequate care and protection of the law. No nation can flourish if children of such nation suffer, therefore India with the help of various international, national and state mechanisms tries to secure the rights of the children as has been discussed above. Legal reform alone cannot bring justice to the child. Undoubtedly, the most effective preventive measure is awareness of such possible abuse and how to deal with it amongst the various service providers – the doctors, teachers, lawyers, judges, police, volunteers, parents, trade unions, and social workers – so that they can significantly reduce the risk of abuse, if it does occur, by responding appropriately. Thus, to conclude these challenges have to be rapidly addressed. And above all, the core value of the universal legal principle that policies be made, structures and processes be established, and actions be taken that are always and invariably in the best interest of the child should be followed. Child is a bud, let it blossom as a flower with nutrition of rights, with fruits of freedom and with care and attention not only from parents but also from the state under the auspices of the society. The struggle for realization of the rights of the child is going to be a long journey. So, in the concluding remarks it can be said that the children also have some rights which must be respected by every individual of the society. Children must not only be respected for their innocence but also for their contribution in the development of the future of the country.

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