**STATUTORY SAFEGUARDS FOR THE PROTECTION AND WELFARE OF CHILDREN- A Legal Perspective**

**Muskan Gupta[[1]](#footnote-2)**

**Sakshi Singh[[2]](#footnote-3)**

**ABSTRACT**

This article throws light on the several provisions regarding the protection and welfare of children. Children are the pillars of the nation as they are the ones who can take the nation towards the track of progress and prosperity. A nation’s development and status is measured by the position of its children. As the children’s cognition is not fully developed, they are most vulnerable to exploitation and abuse. As a consequence, they become the victims of evils such as child labour, child trafficking, child abuse etc. which curtails their freedom, their rights and hinders their nourishment which ultimately acts as a barrier in the betterment of the nation. Children are considered as the weaker section or minority group of the society by virtue of which they need special laws for their protection and welfare. Therefore, the state is accountable for the protection and development of children and that they are not exploited and abused. The state grants several provisions and rights under the constitution of India for their protection and welfare and it also imposes punishments for different crimes and offences against individuals including children under the Indian Penal Code,1860 and it is in this context that the present article studies on these provisions and rights. The provisions related to children are contained in the part III, part IV and part IVA of the constitution which discuss Fundamental rights, Directive principles of state policy and Fundamental duties respectively. Indian constitution and international instruments like Universal Declaration of human rights (UDHR), and Convention on the rights of child (CRC) also plays an important role in the protection and promotion of child rights. The articles under the parts aforementioned, the sections under IPC, International laws and conventions and other Acts related to the protection and welfare of children will be discussed thoroughly in this paper. At the same time the paper will also attempt to have a good insight on the judgments given by the Indian judiciary which have contributed in safeguarding the rights and interests of the children.

**Keywords: Child labour, Child trafficking, Child abuse, UDHR, CRC.**

**INTRODUCTION**

*“Children are like buds in a garden and should be carefully and lovingly nurtured, as they are the future of the nation and citizens of tomorrow”*

*-Pt. Jawahar Lal Nehru*

Children are the future protectors of justice, equality, liberty, sovereignty, fraternity, and eventually international peace and security. The phase of childhood is referred to as golden age which is the age of joy, freedom, innocence, play and the like. And in this age, one hardly shoulders them with responsibilities and obligations. But this is sad reality that instead of providing them freedom, joy, books, games, love and care, etc., they are exploited and abused. Children are vulnerable and are considered as the weaker section of the society, the reason being their tender age. Every human being including children have some inherited rights provided by the nature. These inherited rights are the fundamental or basic rights bestowed in human beings since the stage of foetus. The mother’s womb is the starting point for a foetus and since then a human being is guaranteed with certain basic rights. No one can nullify these rights given by the nature. State has to recognize these basic rights and guarantee them. But unfortunately, even these basic rights are snatched away from them when they become the victims of foeticide and infanticide. Their right to life is infringed. Even if they get the life to live, they are exploited and abused in many ways. There are garbage bags and tools in their hands instead of books. They are burdened with responsibilities at this tender age instead of providing them with games, freedom and joy. They are mercilessly molested, trafficked and abused instead of bestowing love and care on them. The future of the nation also gets in danger along with theirs as they are the future citizens and leaders of the nation. So, who is responsible for all these? Why children are being exploited and abused like this? Who is responsible for their protection and betterment? The answer is not one. Many are responsible for this. Parents at home, neighbours in neighbourhood, teachers at school and the individuals in connection with them. They can be even unknown to them who can stalk them secretly to misuse and exploit them, who can kidnap them, who can traffic them, etc. Thus, they need special provisions and laws for their protection along with their effective implementation.

State is responsible for their protection and development and that they are not exploited and abused and so it grants various rights and laws for them under different statutes. Our Law of the land i.e. The Constitution of India provides the basic rights and laws for their upliftment and protection. For instance, the Constitution provides the Right to Education for children between the age of 6 to 14 years under Article 21A, which is indeed a great need for their development. It also provides laws for prohibiting trafficking and working in factories under articles 23 and 24 respectively which provides them the right against exploitation and many other which will be discussed in this paper. There are other Acts such as the Prohibition of Child Marriage Act, 2006; the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; POCSO Act, 2012 and more such acts which guarantee the rights of the children and provides the punishment for every offence committed against the children. International laws and conventions regarding the protection and welfare of children such as the Convention on the Rights of Child (CRC), 1989 and the Universal Declaration of Human Rights (UDHR) also plays important role.

**Who a Child is?**

In the general sense, any human being who is below the age of majority that is eighteen years is considered to be a child. The similar has been defined by the Convention on the Rights of the Child (CRC), 1989 under Article 1 which says that the term Child measures every human being below the age of eighteen unless under the law applicable to the child, majority to be attained earlier. Convention on the Rights of Child (CRC), 1989 is an international agreement on childhood which is signed by different countries of United Nations who have promised to protect children’s rights. This convention on the Rights of Child sets certain provisions regarding the civil, political, social, health and cultural rights of children.

But in India, according to the census and Indian constitution, a human being below the age of fourteen years is considered to be a child. There are also certain definitions of Child according to different Acts which are as follows: -

* Section 2(ii) of the Child and Adolescent Labour (Protection and Regulation) Act, 1986 defines Child as an individual who has not finished the fourteen years of age.
* Section 2(a) of Prohibition of Child Marriage Act, 2006 defines that a girl is considered to be a child at the age of eighteen and boy at the age of twenty-one. This definition is contingent on their gender.
* Section 2(e) of The Children Act, 1960 defines child under the age of sixteen, if it is a girl and under the age of eighteen, if it is a boy. This definition is also contingent on gender.
* Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines a person as a child who has not completed the eighteen years of age.
* Similarly, Section 2(d) of Protection of Children from Sexual Offences (POCSO), 2012 defines a child who is under the eighteen years of age.

**Offences against Children: -**

1. Child Abuse – Many offences come within the ambit of Child Abuse like Child Battering, Cruelty, Starvation and malnourishment, suicide, etc. and before understanding these offences let’s understand the meaning of child abuse. Child Abuse simply means hurting a child. It is physical, emotional, medical or sexual maltreatment or neglect of a child, specially by those who are accountable for his or her welfare. Now let’s understand abovementioned offences: -

* Child Battering – The physical abuse of a child especially by parent or guardian, as by beating the child is Child Battering.
* Starvation and Malnourishment – Often poor children are denied the basic necessities of life out of which Food is the most essential one. When the children don’t get the food to satisfy their hunger, they face starvation, which ultimately leads to their malnourishment. They don’t get the nutrients for their proper growth and development which leads to diseases in them and make them weak and incapable of performing their role and duties towards the society as a whole.
* Suicide – When the children get abused to such an extent where they are not able to handle their trauma and when they lose every hope to live their life, they commit the offence of suicide. Suicide is the killing of oneself with the intention to end the life. IPC specifies suicide as an offence under Section 309 which states-

*Attempt to commit suicide – Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punishable with simple imprisonment for a term which may extend to one year [or with fine, or with both].*

* Cruelty – The term “cruelty” itself is a very wide concept. It does not have any precise definition. It consists various forms of abuses including physical, mental & emotional mistreatment by parents or caretakers against a child.

1. Child Labour - The term “child labour” is defined as the work done by children that deprives them of their childhood, their dignity and potential, and that is harmful to their physical and mental development. Child labour interferes with their schooling by depriving them to attend school and to study. Instead of books, there are tools and garbage bags in their hands.
2. Child Trafficking – United Nations defines Child trafficking as the form of human trafficking in which the recruitment, transportation, harbouring, transfer, or receipt kidnapping of a child takes place for the purpose of forced labour, slavery and sexual exploitation.
3. Child Marriage - The prohibition of Child Marriage Act, 2006 defines child marriage as marriage between a boy and a girl where the girl has not completed the age of eighteen years and the boy has not completed the age of twenty-one years. Child marriage has proved to be more vulnerable to girls as compared to boys because after marriage girls are expected to live within the boundaries of the house and do the home chores. They are expected to hold the stuff used in the preparation of meals rather than books. This is very unfortunate and is considered to be one of the major hindrances in the female advancement.
4. Child Molestation and Rape – The heinous offence of sexual acts with minors, including touching of genitals, exposure of private parts, taking of obscene images, rape, inducement of sexual acts with the molester or with the other children, and variants of these acts is considered as Child molestation and rape. This does not happens only with the young children or adolescents but also with the infants.
5. Child Prostitution – The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale Of Children (CRC), Child Prostitution and Child Pornography measures child prostitution as “the use of a child in sexual activities for remuneration or any other kind of consideration.” Child prostitution is certainly related with other kinds of child sexual exploitation, such as trafficking and pornography. Many child prostitutes are filmed having intercourse and then these images or videos are stored, shared with others, and, in some cases, are made commercially available.
6. Kidnapping and Abduction – Kidnapping means taking away a child against his/her will by force, deceit or threat whereas when a child is moved from one place, against his/her will by forceful compulsion or by deceitful means, an offence of Abduction is committed.

According to Section 359 of IPC, *Kidnapping is of two kinds:*

* + - 1. *Kidnapping from India,*
      2. *Kidnapping from lawful guardianship.*

For instance, a child may be kidnapped from India as well as from lawful guardianship.

Section 362 of IPC defines Abduction as-

*Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.*

1. Female foeticide and infanticide – Female foeticide is an offence in which the sex of the foetus is found out and aborted if it is a girl. Basically, it is the killing of foetus in the mother’s womb. Although it is illegal, many people continue to practice it in some places. Besides this, there are some communities which practice another offence i.e. Female Infanticide which is the killing of girl child after she is born.

**HISTORICAL BACKGROUND**

In the Antiquity, nobody thought to provide special protection to children. Children were known to be as “small adults” in the Middle Age. Children’s protection started to be put in place, in the fields of medical, social and judicial fields at the beginning of the 20th century. This type of protection started first in France and spread across Europe afterwards.

Since ancient times, the Indian culture has been based on traditional values like mercy, sacrifice, donation, non-violence and equality. The principles of human rights have the foundation in the Indian philosophy since the Vedic era. The Vedas, the Upanishads and the Arthashastras also talks about the concepts of equal rights to men, women, sympathetic concern for women and children and unprejudiced treatment of all human beings living in the society. The concept of children’s rights emerged in the 20th century. Children were only recipients of welfare measures and the fathers were considered as the sole guardians of their children. Persistent bias in the upbringing of children in India is clearly indicated in the records of history. In India number of factors including child’s gender, child’s age, child’s caste and kinship of child led to the biased behaviour against children in India.

In the medieval age from the eleventh to seventeenth centuries almost, due to arrival of the Turks, Arabs, Afghans and the Mughals, witnessed extreme misery and deterioration in India. Children faced adverse circumstances because of the overall economic deterioration borne by the people. Families, particularly in predominant rural India, were not able to afford nutritious food and other basic facilities for their children. Focus on basic education which was very prevalent previously slowly emaciated away. Elementary education among the Hindus was given to those belonging to the higher castes like Brahmins and Rajputs. Among the Muslims, basic education was confined to those belonging to upper-class families provided by the Maulvis. Girls were rarely given education and their status remained inferior in comparison to boys. Neither the rules nor the people took steps to curtail the situation.

Various laws (Apprentices Act, Reformatory Schools Act etc.) were formulated for proper structuring and shaping children’s future in India. Such laws were the initial effective steps that came into being for creating suitable environment for children to grow and develop.

The Declaration of the Rights of the Child 1924 which was also known as the ‘Declaration of Geneva’, because the meeting by League of Nations was held in Geneva. Identifying that ‘mankind owes to the child the best that it has to give, the basis of child rights were established based on the five simple principles of the Declaration for protection of the feeble, exposed and vulnerable for promoting child‘s growth and development. The document, in five chapters, identified and discussed the welfare of children and acknowledged the responsibilities of adults for providing proper support to the right to development, support, growth and protection to children. The Geneva Declaration is a remarkable document that acknowledged and declared the existence of rights specific to children and the responsibility of adults towards children for the first time. Geneva Declaration also made it obvious that the world as a whole had a lawful responsibility in the care, protection and welfare of all children and it was not restricted only to families or communities or even individual countries.

**INTERNATIONAL PERSPECTIVE**

Protection of the children’s rights in today’s world is especially important due to some action taken by some organizations, or individuals, which strictly conduct to breach children’s wellbeing and to treat them as a normal human being and not as a product to sell. This may seem to be a strong statement to be made, and some people will stress that, in the modern times, children are much better protected than in the past decade. Besides, there are still many of the countries where children’s rights are not taking into consideration and not protected at all due to which they suffer great damage, not only physically but also emotionally. Taking all of this into account, it is important to check how the international society protects children, what steps were taken to secure the rights of minors, what instruments we have to protect children’s dignity and self-esteem. United Nations Convention on the Rights of the Child,1989 is the most important piece of international law concerning the rights of children. The other important international instruments regarding the protection and welfare of children are the Committee on the Rights of the Child, Children’s Rights in Juvenile Justice, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’) introduced in 1985, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (‘Havana Rules’) introduced in 1990, United National Common Approach to Justice for Children passed in 2008, etc. The main scope of all these instruments is to secure for all children the right to opportunities to survive, grow and develop, within the context of physical, emotional and social well-being, to each child’s full potential.

The Convention on the Rights of the Child, with a Preamble and 54 articles, was adopted by the United Nations General Assembly by its resolution 44/25 on November 20, 1989, and entered into force on September 2, 1990. Adopting the Convention in November 1989 ended the discussion of 10 years on the issues related to children’s rights, which exactly started in 1978 when the Poland’s government submitted to the United Nation the draft of the convention. The idea of putting all children’s rights into one document was not new. In 1924, the League of Nations adopted a similar declaration, as the United Nations did in 1959. But there was only a declaration concerning children’s rights. Children’s rights were also mentioned in a couple of different UN documents concerning general human rights.

In accordance with the preamble of the Convention the child: “should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity”. Taking this into account, the Convention introduces the children’s development rights, which are, in general, the rights to proper education, play and leisure, cultural activities, access to information and freedom of thought, conscience and religion. Article 14 proclaims that: each child which is growing up in a member state should have the right to the freedom of thought, conscience and religion. Similarly in Article 18 in fine it is said that: “this is the parents’ primary right and obligation to bring up the child and secure its development”. The best interests of the children should be their basic concern. On the other hand, it is the State’s duty to provide each child the access to the education system and assure that each child would receive proper education. This right is expressed in Article 28. This article states that access to the education system should be equal to all children and should not depend on the sex, religion or race. Primary education must be mandatory and available freely to all. Secondary education also needed including general and vocational education, . Establishing the proper education system is not the only State’s responsibility; they are liable for the distribution of the proper information and guidance about it. Almost these same rules apply to the higher education also It should be accessible to all on ability basis but nothing is said about it being free of charge. However, the States are responsible to guarantee that each child younger than 18 years old, who is mentally capable, will get help from the State to start and finish university education. This really interesting obligation relies on the parents’ and State which is to take all necessary measures to encourage regular attendance at schools and the reduction of dropout rates.

The Convention on the Rights of the Child remains, until today, a key reference for the promotion of children’s rights, and a source of inspiration for the administration of justice and the amalgamation of international justice mechanism and standards. What began as a simple project initiated by a communistic country at that time, developed into one of the most important international regulations. The Polish initiative to protect the most vulnerable members of the community, on an international level, is one of the most important initiatives in Polish legal history. The Polish government convinced the whole world that children are worth protection, and that their life should be under special safeguards, because children cannot protect themselves in the adults’ world.

**NATIONAL PERSPECTIVE**

**Constitutional Provisions Relating to Children:**

The makers of our Constitution were well known of the fact that the development of the country can be achieved by the development of the children of the country. Thus, it was necessary to implement such laws in the country which protect the children from exploitation and provide them their rights.

Constitutional provisions that are meant specifically for children are as follows:-

1. **Clause (3) of Article 15 ( Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth) –** Clause 3 of Article 15 of part III of the Indian Constitution provides that nothing in the article shall prevent the state from making any special provision for women and children.
2. **Article 21A (Right to Education)-** This articleunder part III (Fundamental Rights) of the Indian Constitution provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
3. **Article 24 (Prohibition of employment of children in factories, etc.)-** This article under part III of the Indian Constitution provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
4. **Clause (e) of Article 39 ( Certain principles of policy to be followed by the State)-** This clause provides that the shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. This is provided in part IV (Directive Principles of State policy) of the Indian Constitution.
5. **Clause (f) of Article 39 ( Certain principles of policy to be followed by the State)-** This clause provides that the shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
6. **Article 45 (Provision for early childhood care and education to children below the age of six years)-** This article of part IV provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Besides these, children also have rights as equal citizens of India, just as any other adult male human being or female human being and these are: -

1. **Article 14 (Equality before Law)-** This article under part III of Indian Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
2. **Article 15 (Right against discrimination) –** This article talks about the Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.
3. **Article 21 (Protection of life and personal liberty) –** According to this article no person shall be deprived of his life or personal liberty except according to the procedure established by law.
4. **Article 23 (Prohibition of trafficking in human beings and forced labour) –** This article provides right to being protected from being trafficked and forced into bonded labour to human beings including the children.
5. **Article 47 (Duty of the state to raise level of nutrition and the standard of children and to improve public health) –** This article talks about the duty of state to raise the level of nutrition and standard of living and improve the public health for all human beings and children as well.

**Other Legislations:**

Apart from the Constitution there are a number of legislations which deal with the protection of the children. The core protection legislations for the children is enshrined in the following four main laws:

* The Juvenile Justice (Care and Protection) Act, 2015: Juvenile originates from the Latin term *juvneis* which means ‘young’. A person below 18 years of age is known as a juvenile. The Juvenile Justice (Care and Protection) Act, 2015 is enacted as human rights legislation and it is now in force in all state uniformly, repealing by the entire Children’s Act enacted by states individually. This legislation deals with the two types of juveniles. “Juvenile in conflict with law” as defined under section 2(1) and child in need and protection as defined under section 2(d). A juvenile or a child is a person who has not attained the age of 18 years. The penitentiary system consists of treatment of prisoners, the essential aim of which is their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment according to their age and legal status.
* The Prohibition of Child Marriage Act, 2006: The Prohibition of Child Marriage Act, 2006 was enacted to overcome the constraints of the former legislations in effectively dealing with the problem of child marriages in India and to put in place a comprehensive mechanism. It came into force on 1 November 2007. It applies to all the citizens of India irrespective of religion, beyond India. The basic premise of the law is that that the marriage of a child is an offence and a child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys. The provisions of this statute can be classified into three categories:

1. Prevention i.e. to prevent the commission of child marriages,
2. Protection i.e., to protect the victims (children) from such offence and provide support and aid once they are rescued and
3. Prosecution of Offenders i.e., to prosecute the Offenders of this law. The offender is an adult male above 18 years who marries a child. The offenders are also the ones who perform, conduct or abet the child marriages.

* The Protection of Children from Sexual Offences (POCSO) Act, 2012: The POCSO Act was an important step towards creating a safer environment for the children of our country, it was adopted to protect the children from sexual offences like acts of sexual harassment, assault and child pornography. This statute asks for the setting up of Special Courts that are better equipped to deal with such offences in a effective manner. This Act has been amended in 2019 to make better provisions that will help accommodate swift justice in the form of enhanced punishments for several offences. This has been undertaken with the objective of deterring the perpetrators and hence, ensuring the safety of a secured and dignified childhood.
* The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986: This Act aims to eradicate any type of child abuse in the form of employment and prohibit the engagement of children in any type of hazardous employment, who have not completed the age of 14 years. This Act forbids the employment of children in particular occupations and processes. The occupations and work which is prohibited for the children are mentioned in the Act under the Schedule in[Part A](https://www.ilo.org/dyn/natlex/docs/WEBTEXT/27803/64848/E86IND01.htm). This Act in total forbids around 13 occupations and 51 processes for the employment of children.

**SIGNIFICANCE**

Among various stages of a human life, childhood holds a very critical and special stage, as children are like raw clay. They can be moulded into whatever shape we want them to. For instance, if we treat them with love and care and provide them quality of education, they will take the shape of good citizens who will also prove good for the nation’s development. On the other hand, if we treat children with hatred and put bad thoughts about country then they will take the shape of terrorist or anti-nationalist who will become the reason for the destruction of the country. Children have the right to safety, development and the ability to shape their own lives, which is why it is essential to protect the rights of children. Children are entitled to a lot of rights including, right to survive - right to be born, right to get minimum standard of food, shelter and clothing right to live with dignity, right to development- right to develop in all forms, emotional mental and physical, right to education, right to protection- right to be protected from all sort of violence, right to be protected from neglect, right to be protected from physical and sexual abuse, right to be protected from dangerous drugs. Also, there are various treaties like the United Nations Convention on the Rights of the Child (CRC) and United Declaration of Human Rights (UDHR), which works to protect their rights and in favour of the welfare of children. Human rights begin with children rights. There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and that they grow up in peace. In short investing fully in children today will ensure the well being and productivity of future generation for decades to come.

**ROLE OF JUDICIARY**

Indian judiciary with a collage of constitutional and legislative provisions took action against the exploitation of children and gave full protection to the rights of children, whenever called upon. With many landmark judgments, it has created a path for the evolution of the concept of child rights in India. Let us look at the contribution of the judiciary in the protection of child rights through different landmark case laws.

M.C. Mehta Vs State of Tamil Nadu and others, AIR 1997 SC 699

This case is one of the landmark cases against child labour in factories and specially which is engaged in manufacturing hazardous substances. The court, in this case, directed the State to work on removing poverty as according to Justice PN Bhagawati, poverty is directly linked with child labour. The court held that engaging children in hazardous work is a violation of their rights under articles 39(f) and 45, and thus illegal. In this case, a public activist i.e., the plaintiff (M.C. Mehta) filed a PIL against the state of Tamil Nadu for improving the working conditions for children and for providing them with the education. The court held that children under the age of 14 years could not be engaged in hazardous employment and thus ordered the government to establish and maintain child labour rehabilitation welfare fund. The court also directed the employers who violated child labour laws to make a deposit into the rehabilitation welfare fund and the government to offer the parent of each such child engaged in hazardous employment, a job or else to make a deposit into the fund.

Bandhua Mukti Morcha Vs Union of India and others, (1997) 10 SCC 549

This public interest litigation (PIL) case was filed under Article 32 of the Constitution directly before the Supreme Court and petitioned the Court to direct the State of Uttar Pradesh to take the steps to end child labour.

In its judgment, the Court held the importance of protecting children’s rights to education, health, and development in ensuring India’s progress as a democracy. In this case, the Court found that practical steps could be taken to protect and promote the rights of children in the poverty-stricken and vulnerable population of Indian society. The Court also observed India’s obligations under the Universal Declaration of Human Rights and the Convention on the Rights of the Child to provide free primary education for all children in the country and to protect children against exploitation. The orders of the court were to direct the States to take steps to frame policies for eliminating the employment of children below the age of 14; provide compulsory education to all children employed in factories, mining, and other industries; ensure that the children receive nutrient-rich foods; and administer periodic health check-up for them.

J.P. Unnikrishnan and others Vs State of Andhra Pradesh and others, 1993 SCC (1) 645

In this case, the Supreme Court held that all the citizens of India have the fundamental right to education and that this right is ensured under Article 21 of the Constitution. This right is, however, not an absolute right. Every child/citizen of the country has the right to free education until he completes fourteen years of age. Thereafter, his right to education is contingent on the economic capacity and development of the State.

Mohini Jain vs. State of Karnataka, 1992 AIR 1858

In this case, the apex Court was called upon to deal with the question of right to education under Article 41 of Indian constitution and once again emphasized the importance of Directive Principles by holding that the right to education is a very important fundamental right and made the following observation: “The directive principles of state policy under part IV which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III”. Both are supplementary to each other. The State is under a constitutional mandate to create conditions in which the Fundamental Rights guaranteed under Part III can be enjoyed by all. Without making “Right to education” under Article 41 of the Constitution a reality, the Fundamental Rights under Chapter III shall remain beyond the reach of large majority which is illiterate. The Fundamental Rights under Part III of the Constitution of India including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and enjoyed unless a citizen is educated and is conscious of his individualistic dignity”.

Vishal Jeet vs. Union of India, (1990) 3 SCC 318

The Supreme Court in this case dealt with some seminal questions in relation with the sexual exploitation of children. It observed that it is highly deplorable and heart rending to note that many poverty-ridden children and girls in the prime age of their youth are taken to the “flesh market‟ and forcibly pushed into “flesh trade” which is being carried in our utter violation of all standards of morality, decency and dignity of mankind. The court issued directions to the state Government for setting up rehabilitation homes for children who were found begging in streets and also the girls to protective homes who were pushed into ‘flesh trade’.

Gaurav Jain vs. Union of India, [1997] 8 SCC 114

In this case it was held by the Supreme court that the children of the prostitutes also have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached to them. The court directed for the formation of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of the rehabilitation.

People’s Union for Democratic Rights Vs Union of India, AIR 1982 SC 1472

This case is also known as Asiad Workers case. The Supreme Court held that though the Employment of Children Act, 1938 did not incorporate the construction work on projects because the construction industry was not a process specified in the Schedule of the Act, yet, such construction was a hazardous occupation and under Article 24 children under fourteen years could not be employed in a hazardous occupation. The right of a child against exploitation under Article 24 of Indian Constitution was enforceable even in the absence of implementing legislation and in a public interest proceeding.

Sanjit Roy vs. State of Rajasthan, 1983 AIR 328

In this case workers were engaged by Public Works Department, Rajasthan and they were not being paid minimum wages. The Court held that non-payment of minimum wages comes under the category of forced labour. Justice P.N. Bhagwati said that “The State cannot be permitted to take advantage of the helpless condition of the affected people and extract labour or service from them on payment of less than the minimum wage. No work of utility and value should be allowed to be obtained on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.”

Neeraja Chaudhary vs. State of Madhya Pradesh, AIR 1984 SC 1099

Justice P.N. Bhagwati said that “Whenever it is found that any labourer is forced to provide labour for no remuneration or nominal remuneration, the presumption would be that he is a bonded labourer unless the employer or the State Government prove otherwise such presumption to be wrong.” The Court stressed on the release and rehabilitation of bonded labourers.

Salal Hydro Project Vs Jammu and Kashmir, AIR 1987 SC 177

The court maintained that child labour is a financial problem. Poor parents seek to augment their inadequate income through employment of their children. So, a total prohibition of child labour in any form may not be socially feasible in the prevailing socio-economic environment. Article 24, therefore, puts only a practical restriction on child labour. The court further observed that as long as there is poverty and destitution in this country, it will be difficult to eradicate child labour.

**CONCLUSIVE REMARKS**

Children requires rights. These rights for children are aimed at protecting them against the abuses and crimes to which they may be exposed. Children have been victims of many wrongs, some of them have faced detention, some of them been abused sexually, girls become the victim of genital mutilation, and others have been forced to participate in child employment. All these evils that have been committed against children need to be countered anyhow. For that , appropriate laws need to be put in place to ensure that the children have rights and these rights are protected in the most efficient manner possible.

The Convention on the Rights of the Child (CRC) and Universal Declaration of Human Rights (UDHR) plays “in favour for the best interest of the child” at the core in all the activities having relation with the child. The government holds the power for implementing all the moves that are aimed at protecting the rights of child. As a move to ensure that children enjoy their rights, the governments should take immediate measures to bring to an end to the dangerous and exploitative kinds of labour against children and these kinds of practices include exposing children to commercial sex, bonded labour and any other form of work that puts the life and well-being of the children in danger. Lastly, the government is supposed to set up all kinds of inclusive programs that ensure there is promotion of equal treatment of children regardless of their gender and to ensure that they stay away with those practices that are harmful to the children. Apart from government, at home, there are parents and at schools teachers also plays a vital role to protect the child from evil in furtherance making them aware about their rights and work for the welfare of children .

**SUGGESTIVE MEASURES:**

General Suggestions :-

Children are young people who have same general human rights as adults have and also are entitled with specific rights that recognize their special needs, Children are neither the possessions of parents nor of the state. They must depend on adults for the nurture and guidance. Such nurture is mainly found from adults in child’s families, but when primary adult or the guardian of the child cannot be able to meet children’s needs, it is up to the state and they automatically become the primary duty bearer to find an alternative in the best interests of the child and also to take care of him .Practically every area of government policy, from education to public health affects children to some extent. Also the views of the children must also be heard and considered in the political process. Many changes in society are having a disproportionate, and often negative, impact on children development such as family structure, climate change, mass migration, shifting employment patterns and a shrinking social welfare net in many countries all have strong impacts on children. The healthy development of children is crucial for the future well-being of any society. And because they are still developing children are vulnerable to many factors such as proper guidance poverty, inadequate health care, nutrition, safe water, housing and environmental pollution. The effects can lead to several disease, malnutrition and poverty which will definitely threaten the future of children which will also affect the future of the societies in which they live. Also according to the social research child’s earliest experiences significantly influence their future development.

**Own suggestions:-**

The children’s share in the budget must be in accordance with their needs. The Government should increase their share in the amount of the budget for their development in the sector of health and education. This should be given consideration because the condition of the children in India is not satisfactory as there is more child labour, abuse and exploitation. So the Government should increase their share accordingly to prevent the Offences against them and provide them with the better health care and opportunities of education. Secondly, the government should try to open more schools at zero cost for the children whose parents can’t afford their education especially for the rural children who remain deprived of proper education. Furthermore, it should pay attention towards coming up with the separate subject of sex education in the schools so that they get the sufficient knowledge about this particular area and the Offences which can be committed against them in regard to this. By this they will also become aware about the facts that they can become the victims of serious STDs (sexually transmitted diseases) like HIVAIDS, Syphilis, Gonorrhoea, etc. Parents should also play a vital role in imparting sex education to their children.

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