



# Status of children in India : An Analytical study

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## Abstract

Children are the foundation of human society. The shape of future human society shall be determined by their mental and physical wellbeing. Just as the personality of an adult is built in his or her primitive years, the development of a nation is determined by the priority given to his child. The children are the supreme assets of the nation; hence in national policy child's care should occupy the most prominent place. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being number of resolutions and laws both at national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation.

Keywords: child, Legislation, Judicial Pronouncements .

## Introduction

*"If we are to teach real peace in the world, and if we are to carry on a real war agai<sup>n</sup>st war, we shall have to begin with the children".*

**-Mahatma Gandhi**

Children are and always shall be, a nation's most important resource. Their contribution is significant for the future well-being of a nation; it is, therefore, the primary duty of all countries to give top priority to the welfare of its children. The importance of the child lies in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be a universe without humanity. Moral sense of the society compels us to search for a solution to the problems of the children. In principle, every child has a right to love and be loved. Children are a "supremely important national asset". The future well being of a

nation depends on how its children grow and develop. "Every community must, therefore, devote full attention, to ensure that children are properly cared for and brought up in a proper atmosphere where they would receive adequate training, education and guidance in order that they may be able to have their rightful place in society when they grew up."

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

## 1.2 Who is a Child?

Children are the foundation of human society. The shape of future human society shall be determined by their mental and physical wellbeing. Just as the personality of an adult is built in his or her primitive years, the development of a nation is determined by the priority given to his child. The children are the supreme assets of the nation; hence in national policy child's care should occupy the most prominent place. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being number of resolutions and laws both at national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation. <sup>1</sup>

## 1.3 LEGAL DEFINITIONS OF CHILD

- (i) Oxford Dictionary of English defines the term 'Child' as a young human being below the age of full physical development.<sup>2</sup>
- (ii) The U.N. Convention on the Rights of the Child, 1989 defines the term 'Child' means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.<sup>3</sup>
- (iii) The Indian Christian Marriage Act, 1872 does not define the term 'Child'. Instead it defines the term 'Minor' which means a person who has not completed the age of twenty-one years and who is not a widower or a widow.<sup>4</sup>
- (iv) The Majority Act, 1875<sup>5</sup> defines that every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.<sup>6</sup> So, it does not define the term 'Child' instead it provides the minimum age of attaining majority.

<sup>1</sup> M.B. Jameel, "Menace of Child Labour," Paper Published n Souvenir of National Seminar on Child Rights in the Background of the U.N. Convention on the Rights of Child, 1989 organised by the Department of Law, Dr. Ambedkar College, Nagpur, 73 (15<sup>th</sup>& 16<sup>th</sup> February, 2004).

<sup>2</sup> Catherine Soanes and Angus Stevenson (ed.), Oxford Dictionary of English, New Delhi, Oxford University Press, 300 (2004).

<sup>3</sup> Article 1 of the Convention.

<sup>4</sup> Sec. 3.

- (v) The Guardians and Wards Act, 1890<sup>7</sup> also does not define the term ‘child’. It defines that ‘Minor’ which means a person who, under the provision of the Indian Majority Act, 1875, is to be deemed not to have attained his majority.<sup>8</sup>
- (vi) The Reformatory Schools Act, 1897 also does not define the term ‘Child’. It defines that ‘Youthful Offender’ means any boy who has been convicted of any, offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.<sup>9</sup>
- (vii) The Indian Succession Act, 1925<sup>10</sup> does not define the term ‘Child’. It defines that ‘Minor’ means any person subject to the Indian Majority Act, 1875 who has not attained his majority within the meaning of that Act and any other person who has not completed the age of eighteen years.<sup>11</sup>
- (viii) The Child Marriage Restraint Act, 1929 defines that ‘Child’ means a person who, if male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.<sup>12</sup>
- (ix) The Tea Districts Emigrant Labour Act, 1932 provide that a ‘Adult’ means a person who has completed his sixteenth year, and ‘Child’ is a person who is not an adult.<sup>13</sup> It means ‘Child’ is a person below the age of sixteen years.
- (x) The children (Pledging of Labour) Act, 1933 defines that ‘Child’ means a person who is under the age of fifteen years.<sup>14</sup>
- (xi) The Employment of Children Act, 1938 does not define the term ‘Child’. But it prohibited employment of children below the age of fifteen years in any occupation specified in the Act.<sup>15</sup>
- (xii) The Bengal Vagrancy, Act, 1943 provides the ‘Child’ means a person under the age of fourteen years.<sup>16</sup>
- (xiii) The factories Act, 1948 defines that ‘Child’ mean a person, who has not completed his fifteenth year of age.<sup>17</sup>
- (xiv) The Minimum Wages Act, 198 defines that a ‘Child’ means a person who has not completed his fourteen year of age.<sup>18</sup>
- (xv) The Plantations Labour Act, 1951 defines the term ‘Child’ means a person who has not completed his fourteenth year of age.<sup>19</sup>

<sup>5</sup> Act No. 9 of 1875.

<sup>6</sup> Id. Sec. 3 (1)

<sup>7</sup> Act No. 8 of 1890.

<sup>8</sup> Id., Sec. 4 (1)

<sup>9</sup>Sec. (a)

<sup>10</sup> Act No. 39 of 1925.

<sup>11</sup>Sec. 2 (e).

<sup>12</sup> Sec. 2 (a)

<sup>13</sup>Sec. 2 (d).

<sup>14</sup>Sec. 2.

<sup>15</sup> Sec. 3 (1)

<sup>16</sup> Sec. 2 (c)

<sup>17</sup>Sec. 2 (bb).

<sup>18</sup>Sec. 2 (c).

<sup>19</sup>Sec. 2 (C).

- (xvi) The Cinematograph Act, 1952 defines that “Adult” means a person who has completed his eighteenth year.<sup>20</sup> This Act uses the word ‘Child’ in many of its provisions but it does not define the age but from the definition of ‘adult’ inference can be drawn that ‘child’ means a person below the age of eighteen years.
- (xvii) The Immoral Traffic (Prevention) Act, 1956 defines that ‘Child’ means a person who has not completed the age of sixteen years.<sup>21</sup>
- (xviii) The Women’s and Children Institutions (Licensing) Act, 1956 defines that ‘Child’ means a boy or girl who has not completed the age of eighteen years.<sup>22</sup>
- (xix) The Young Persons (Harmful Publications) Act, 1956 does not define the term ‘Child’. It defines that ‘Young Person’ means a person under the age of twenty years.
- (xx) The Hindu Minority and Guardianship Act, 1956<sup>23</sup> does not define the term ‘Child’. Instead it defines the term ‘Minor’ which means a person who has not completed the age of eighteen years.<sup>24</sup>
- (xxi) The Bombay Prevention of Begging Act, 1959 defines that ‘Child’ has the meaning assigned to it in the Children Act for the time being in force in the Union Territory of Delhi.<sup>25</sup> It means ‘Child’ means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years as per the Children Act, 1960.
- (xxii) The Children Act, 1960 defines ‘Child’ means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.<sup>26</sup>
- (xxiii) The Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960 defines that ‘Child’ means a boy or a girl who has not completed that age of eighteen years.<sup>27</sup>
- (xxiv) The Motor Transport Workers Act, 1961 defines that ‘Child’ means a person who has not completed his fourteenth year of age.<sup>28</sup>
- (xxv) The Maternity Benefit Act, 1961 defines that ‘Child’ includes a still-born child.<sup>29</sup>
- (xxvi) The Income Tax Act, 1961<sup>30</sup> does not define the age of ‘Child’. It defines it for the purpose of assessment which means ‘Child’, in relation to an individual, includes a stepchild and an adopted child of that individual.<sup>31</sup>
- (xxvii) The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 defines that ‘Child’ means a person who has not completed fourteen years of age.<sup>32</sup>

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<sup>20</sup> Sec. 2 (b)

<sup>21</sup> Sec. 2 (aa).

<sup>22</sup> Sec. 2 (a).

<sup>23</sup> Act No. 32 of 1956.

<sup>24</sup> Id., Sec. (a)

<sup>25</sup> Sec. 2 (1) (iv).

<sup>26</sup> Sec. 2 (e).

<sup>27</sup> Sec. 2 (c).

<sup>28</sup> Sec. 2 (C)

<sup>29</sup> Sec. 3 (b).

<sup>30</sup> Act No. 43 of 1961

<sup>31</sup> Id., Sec. 2 (15B).

- (xxviii) The Medical Termination of Pregnancy Act, 1971 also does not define the term ‘Child’. It defines that ‘Minor’ means a person who under the provisions of the Indian Majority Act, 1875 is to be deemed not to have attained his majority.<sup>33</sup>
- (xxix) The Dangerous Machines (Regulation) Act, 1983 defines that ‘Child’ means a person who has not completed his fourteenth year of age.<sup>34</sup>
- (xxx) The Child Labour (Prohibition and Regulation) Act, 1986 defines the term ‘Child’ means a person who has not completed his fourteenth year of age.<sup>35</sup>
- (xxxi) The Juvenile Justice Act, 1986 does not define ‘Child’. It says that ‘Juvenile’ means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.<sup>36</sup>
- (xxxii) The Mental Health Act, 1987 does not define the term ‘Child’. Instead it defines that ‘Minor’ means a person who has not completed the age of eighteen years.<sup>37</sup>
- (xxxiii) The Juvenile Justice (Care and Protection of Children) Act, 2000 defines that ‘Juvenile’ or ‘Child’ means a person who has not completed eighteenth year of age.<sup>38</sup>
- (xxxiv) The Goa Children’s Act, 2003 defines that ‘Child’ means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act. Provided that in so far as a victim in an offence of rape is concerned, ‘Child’ shall mean any person who has not completed sixteen years of age.<sup>39</sup> Similarly, ‘Child in case of Child Labour’, shall be a person who has not completed his fourteenth year of age.<sup>40</sup>
- (xxxv) The Protection of Women from Domestic Violence Act, 2005<sup>41</sup> defines that ‘Child’ means any person below the age of eighteen years and includes any adopted, step or foster child.<sup>42</sup>
- (xxxvi) The National Rural Employment Guarantee Act, 2005 does not define the term ‘child’. But it defines that “Adult” means a person who has completed his eighteenth years of age.<sup>43</sup> Author is of the view that inference can be drawn that ‘child’ or ‘minor’ is a person below the age of eighteen year as per this Act.
- (xxxvii) The Prohibition of Child Marriage Act, 2006 defines that ‘Child’ means a person who, if male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.<sup>44</sup>

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<sup>32</sup> Sec. 2 (b)

<sup>33</sup> Sec. 2 (c)

<sup>34</sup> Sec. 2 (a)

<sup>35</sup> Sec. 2 (ii)

<sup>36</sup> Sec. 2 (h)

<sup>37</sup> Sec. 2 (q)

<sup>38</sup> Sec. 2 (k)

<sup>39</sup> Sec. 2 (d)

<sup>40</sup> Sec. 2 (e)

<sup>41</sup> Act No. 43 of 2005

<sup>42</sup> Id., Sec. 2 (b).

<sup>43</sup> Sec. 2 (a)

<sup>44</sup> Sec. 2 (a)

- (xxxviii) The Right of Children to Free and Compulsory Education Act, 2009 defines that ‘Child’ means a male or female child of age of the six to fourteen years.<sup>45</sup>
- (xxxix) The Protection of Children form Sexual Offences Act, 2012 defines that ‘Child’ means any person below the age of eighteen years.<sup>46</sup>
- (xl) The Juvenile Justice (Care and Protection of Children) Bill, 2014<sup>47</sup> defines that ‘Child’ means a person who has not completed eighteen year of age.<sup>48</sup>

#### 1.4 Situation of the Child in India: The Rights Perspective

The UN Convention on the Rights of the Child 1989 highlights four basic rights which are essential for a child.

The convention draws attention to four sets of civil, political, social and economical and cultural rights of every child. These include:

##### **The Right to Survival**

Which includes the right to life, the highest attainable standard of health, nutrition and adequate standards of living. It also includes the right to a name and a nationality.

##### **The Right to Protection**

Which included freedom from all forms of exploitation, abuse, inhuman or degrading treatment and neglect, including the right to special protection in situations of emergency and armed conflicts.

##### **The Right to Development**

Which includes the right to education, support for early childhood development and care, social security and the right to leisure, recreation and cultural activities.

##### **The Right to Participation**

Which includes respect for the views of the child, freedom of expression, access to appropriate information, and freedom of thought, conscience and religion.

<sup>45</sup> Sec. 2 (c)

<sup>46</sup> Sec. 2 (1) (d)

<sup>47</sup> The Draft Juvenile Justice (Care and Protection of Children) Bill, 2014, avialble at:

[http://wcd.nic.in/icpsmon/pdf/draft\\_%207\\_%20JJ\\_Bill\\_June\\_2014\\_18062014.pdf](http://wcd.nic.in/icpsmon/pdf/draft_%207_%20JJ_Bill_June_2014_18062014.pdf). (Visited on 25<sup>th</sup> June, 2014).

<sup>48</sup>Id. Sec. 2 (h).

- **Role of the State**

Several government documents indicate the state's concern for children and give an impetus to develop services for the welfare of children. The Constitution of India, in its sections 3 and 4, has made several provisions for the care, protection and prevention of exploitation of children such as prohibition of employment of children below 14 years in any hazardous occupations (Article 24)<sup>49</sup>, and free and compulsory education of children up to the age of 14 years (Article 45). The Direct Principles of the State Policy reinforces the commitment state to the child. Thus, the child in India is theoretically protected by a framework of well-conceived constitutional safeguards. National Policy on Children, adopted by Government of India in 1974, acknowledges the role of the state vis-a-vis children. In fact, India is one of the few countries in the world having a clear-cut policy document for the welfare of children. The policy seeks to provide adequate services for children before and after birth and through the period of growth to ensure their full physical, mental and social development. The policy document, however, is just a reference point available for planning of schemes, programmes, services and other interventions in the field of child welfare. There is lack of linkage among several national policies which have a direct bearing on child development, such as the policies on population, health and education. It is, therefore, essential that the children policy, on children may be reviewed and revised in the light of the UN Convention<sup>50</sup>.

It is only through conscious intervention in all three areas of teaching, research and field instruction will there be a shift in the perception of social workers about children-from beneficiaries to individuals, in their own rights. This, in turn, would be able to consciously influence policy makers, opinion makers and the public at large, thereby creating a movement, which aims at the empowerment of children and emphasizes children's participation on issues relating to their needs and life situations.

In 1974 the Government of India adopted the National Policy for Children declaring that "the Nation's children are a supremely important asset." The Policy Resolution forms part in our national plans for the development of human resources, so that "our children grow up to become robust citizens, physically fit, mentally alert and morally healthy."

The concern for the needs of, children has been felt at the international level as well. In 1959 the U.N. General Assembly came out with the Declaration of the Rights of the Child. This was followed by a resolution passed in 1976 declaring 1979 to be the International Year of the Child; which India celebrated with much enthusiasm.

<sup>49</sup> Article 24 The Constitution of India, 1950

<sup>50</sup> UN Convention on the Right of Children 1989

The Conventions adopted by the International Labour Organization (ILO) have helped concretize the laws governing child labour in many countries including India. The Conventions adopted by the ILO relating to employment of children can be classified as under:-

**(1) Minimum Age for Employment**

There are ten ILO Conventions which put restrictions on the minimum age for employment of workers engaged. In various sectors such as agriculture, industry, underground work, non-industrial establishments etc.

**(2) Medical Examination**

There are five ILO Conventions which require the production of a medical certificate of fitness from a certifying doctor before being employed in industry, non-industrial employment and underground work.

**(3) Night-work**

There are three ILO Conventions that attempt to regulate the working hours of young persons during the night in both industrial and non-industrial occupations.

Out of all the above mentioned 18 ILO Conventions, India has ratified six (ILO) Conventions<sup>51</sup>.

Convention No. 5 provides, that children under the age of 14 years should not be employed or allowed to work in any public or private industrial undertaking other than an undertaking in which members, of the same family are employed.

Convention No. 6 and 90 regulate the work.

Convention No. 15 forbids the employment of young persons below the age of 18 years on ships as trimmers and stokers with an exception which permits young persons to work on school-ships or training ships.

Convention No. 16 is concerned with the compulsory medical examination of children and young persons employed at sea.

Despite the fact that India has ratified the UN Declaration of the Rights of the Child and various ILO Conventions, the exploitation of children in India is rampant. A series of legislations and, the National Policy for Children have also not helped much in removing the disabilities among children. Clearly, the fault lies

<sup>51</sup> Conventions numbers 5, 6, 15, 16, 90 and 123

not only in the implementation and enforcement of such legislations and welfare programmes; but also the given socio-economic order that proves most conducive to child exploitation in so many ways.

For various reasons the laws relating to child remain either unimplemented or improperly implemented. Society also lacks full awareness of the existing legislations and their implications. As such the people who violate the laws are not brought to book. Besides there are, many structural loopholes in the existing legislations which prove a hindrance to their effective implementation. Moreover, there are many important areas which are either not covered by legislations or, if covered, do not have adequate legislations. For example, the Child Labour (Prohibition and Regulation) Act, 1986 does not regulate the conditions of child labour in the unorganized sectors; e.g. domestic work, hawking newspapers, vending, coolie, hotel, restaurant and canteen work. There are other labour laws that do not conform to the International labour laws.

There is no uniform adoption law governing all communities in the country. The law pertaining to the custody and guardianship of the child is male biased.

The recently adopted United Nations, Convention on the "Rights of the Child" is an excellent instance of legislative initiative for bringing together in one comprehensive code the legal benefits and stipulations concerning children. It lays down guidelines which should be followed by every country or community so that children are not subjected to torture, are not unjustly separated from their families, receive adequate nutrition and proper medical care, are not deprived of basic education with a view to ensuring all round development of their personality.

As of date the Convention has been officially signed by 92 countries indicating their intention to ratify it. India has yet to sign it. The Convention can come into force only when ratified, by 20 countries. So far it has been ratified by six countries.

Considering that the Convention aims towards setting "children's rights firmly where they should be" every future Indian legislation on children should conform to the norms enunciated in this International Convention.

To ensure that the community, especially the social activists, keeps abreast with the existing legislations pertaining, to children, an attempt has been made to compile, classify and elucidate them in this work.

**These are several international law related to child right :-**

- a) Universal Declaration of Human Rights 1948
- b) European Convention on Human Rights 1950
- c) Declaration of the Rights of the Child 1959
- d) Hague Convention on Jurisdiction, etc., Relating to Adoptions 1965
- e) International Covenant on Economic, Social and Cultural Rights 1966
- f) International Covenant on Civil and Political Rights 1966
- g) European Convention on the Adoption of Children 1967
- h) Minimum Age Convention 1973
- i) Convention on the Elimination of all Forms of Discrimination against Women 1979
- j) Hague Convention on the Civil Aspects of International Child Abduction 1980
- k) The European Convention Concerning the Custody of Children 1980
- l) African Charter on Human and People's Rights 1981
- m) Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors 1984
- n) U.N. Convention on the Rights of the Child 1989
- o) African Charter on the Rights and Welfare of the Child 1990
- p) Hague Convention on the Protection of Children in Inter-country Adoption 1993
- q) European Convention on the Exercise of Children's Rights 1996
- r) Hague Convention on Jurisdiction, etc., for the Protection of Children 1996
- s) Worst Forms of Child Labour Convention 1999

**• The Child and the Constitution of India**

Children need special laws to protect them from exploitation and fraud, to absolve them from certain liabilities and to create conditions conducive for their healthy development.

During the pre-Independence era the British gave low priority to improving the lot of the children. As such very few statutes relating to children were enacted. It was only after Independence that the State became fully conscious of its responsibility towards children.

The preamble to our Constitution vests sovereignty in the citizens of India. A citizen of India may be an adult or a child. Therefore, the fundamental rights and the Directive Principles of State Policy contained therein, apply equally to adults and children.

The Constitution in Article 14<sup>52</sup> guarantees all persons equality before the law and equal protection by the law.

Article 15 says down that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or residence. It seeks to obliterate and help eliminate social discrimination existing amongst children on the basis of sex, caste and creed.

Article 15(3)<sup>53</sup> enables the State to make special provisions for women and children. It gives power to the State to intervene and formulate special enactments that would uplift the social and legal status of children. Clause (4) of Article 15 gives power to the State for making, special provisions for the advancement of socially and educationally backward classes of citizens or for scheduled castes and scheduled tribes.

Despite these constitutional provisions the girl child in India continues to be discriminated against her male counterpart on grounds of sex bias. Her status in the society is that of a lesser child. Today her rejection begins even before her birth, the prenatal sex determination tests have led mothers to eliminate female fetuses by abortions.

Article 15 of the Constitution is secular in nature. Its main objective is to remove social inequality through legal means. It reflects Gandhi's humanitarianism founded on the belief that "democracy can only exist and flourish amongst a society of equals".

Article 17 abolished untouchability by forbidding its practice in any form. It also makes any liability arising from untouchability a punishable offence and seeks to protect children of scheduled caste and scheduled tribes from discrimination.

Article 21<sup>54</sup> guarantees to each child the protection of life and personal liberty, as is guaranteed to every adult and cannot be taken away by the State except according to procedure established by law.

Article 21A 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.

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<sup>52</sup> Article 14 The Constitution of India, 1950

<sup>53</sup> Article 15 (3) The Constitution of India, 1950

<sup>54</sup> Article 21 The Constitution of India, 1950

The Constitution lays down certain provisions to prevent the exploitation of the weaker sections of society, who being compelled by abject poverty, allow them to be exploited by unscrupulous individuals or even by the State. To put an end to such exploitation Article 23 and 24 of the Constitution expressly prohibits traffic in human beings.

Traffic in human beings means, dealing in men, women and children like goods with the purpose of selling, letting or otherwise disposing them off. It also includes traffic in women and children for immoral or other purposes.

Article 24 prohibits employment of children in factories etc. It emphatically states that no child below the age of fourteen years shall be employed in any factory or mine or engaged in any other hazardous employment.

The provision in Article 24 is in the interest of the health and strength of young persons and in keeping with the directive principle in Article 39(e) which imposes a duty on the State to ensure that the health and strength of children are not abused and that children are not forced by economic necessity to enter vocations unsuited to their age or strength.

Accordingly, the judgment given by the Supreme Court in *People's Union for Democratic Rights Vs. Union of India*<sup>55</sup>. The employment of children below 14 years of age in Asiad Games is clearly a violation of Article 24 and has preserved the sanctity of the rule of law enshrined in the Article. In the instant case, an organization formed for protecting democratic rights, filed a petition in the court alleging violation of Article 24 by the employers by employing children below 14 years of age in construction work. It was contended by the employers that the 'Construction Industry' was not included in the schedule of the Employment of Children Act (26 of 1938) as a hazardous occupation and therefore they had not violated any labour law. The Court held that construction work being hazardous comes well within the meaning of Article 24 which means that children below 14 years of age cannot be employed in construction work even if "construction industry" is not mentioned in the schedule of Employment of Children's Act as a hazardous occupation.

Every child is entitled to the fundamental rights enumerated above. Whenever there is a violation of a fundamental right, the child can have it enforced in the court.

The Directive Principles of State Policy as contained in Part IV of the Constitution cannot be enforced in the court like the Fundamental Rights, but they are fundamental in the governance of the country and it is the duty of the State to apply these principles while making laws.

<sup>55</sup> 1982 AIR 1473, 1983 SCR (1) 456

Children constitute the most vulnerable section of society. Therefore, the State has been specially called to look into certain social and economic problems that plague them. The Directive Principles which directly or indirectly deal with children are:

Article 39(f)<sup>56</sup> makes it obligatory for the State to direct its policy towards securing "the health and strength of children and that they 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."

Article 45 The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

Article 46 imposes a responsibility on the State to promote the educational and economic interests of the weaker sections of the people.

Article 47 makes it obligatory for the State to raise the level of nutrition and the standard of living of its people and to improve public health.

Freedom of conscience and the right to profess, practice and propagate any religion is provided in Article, 25 and 26. Special care is, therefore, taken by the State to ensure that no specific religion is imposed on children in schools and institutions.

The Indian Constitution, no doubt, gives a lot of power to the State to formulate welfare legislations for the upliftment of the status of the child. But, intervention alone by the State will not help without a social awakening to the problem. There should be a social consensus for a general and conscious acceptance of legislations directed towards satisfying the social, civil, economic and cultural rights of the child.

- **Notable Supreme Court's decisions:**

In **Sheela Barse Vs. Union of India**<sup>57</sup> the Court held that where a child below 16 years of age is arrested for an, offence punishable with imprisonment of not more than seven years, investigation must be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time the case against the child must be closed for of otherwise it would be a breach of the fundamental right to speedy trial implicit in Article 21 of the Constitution. In the same case, the court also directed the State legal aid and Advisory Board in each State, or any other Legal Aid Organization, established, in the State concerned, to send two lawyers to each jail within the State once a week, to provide legal assistance to children below 16 years of age who were confined. To most of us, the "rights of a child" as a concept and the philosophy behind the said concept may

<sup>56</sup> Article 39(f) The Constitution of India, 1950

<sup>57</sup>1986 AIR 1773, 1986 SCR (3) 443

appear quite simple and an easy perception. It is because all of us have passed through childhood and come across children in a very familiar way in the close circle of the family, among relatives, friends and social acquaintances. That apart, one develops a feeling that if he or she gets acquainted with certain, laws like the Juvenile Justice Act<sup>58</sup>, Child Rights Act, 2005, the law relating to pre-natal sex determination, child labour, and violence caused to a child in various spheres, etc., he has a thorough entry into the subject. Definitely acquainting oneself with the law is essential, but that apart, one has to understand how generations of thinkers, lawmakers, writers and philosophers have conceptualized the rights of a child, whether they are enacted by a statute or developed by natural process in a civilized society.

Almost two centuries back William Wordsworth the English poet laureate had stated, "Child is the father of man". Prior to him John Milton had remarked, "Child shows the man as morning shows L the day". Emerson, a great American thinker, who has been, responsible in imbibing a deep sense of optimism into the American psyche, had once stated that "when a child is born I see the growth of human race."

The Supreme Court of India in *M C. Mehta v. State of Tamil Nadu*<sup>59</sup>, while dealing with engagement of children in factories

The true measure of a nation's standing is how well it attends to its children – their health and safety, their material security, their education and socialization, and their sense of being loved, valued, and included in the families and societies into which they are born.

In any nation, the state of children and their wellbeing is not only an indication of its moral worth but also shapes their future.

The language about children in social policy has changed from focusing on the notions of child welfare to a much, broader and holistic view of child development within an ecological perspective. Policy want for nation's all children, and many government have incorporated rights of children into legislation. However, the term children's 'rights' are yet not well understood indeed, it is defined and used in very different ways. Nevertheless, despite this, it is beginning to be perceived as useful in providing a shared language for all the different disciplines working with children and families.

The twenty-first century is witnessing growing acknowledgement of children's well-being, both as concept and practice. Status of children is a reflection of the wellbeing-both economical and social--- of society. But how this idea takes hold in Indian society? If public authorities adopt a minimalist and defensive approach in human rights, will our courts be swamped with new claims? Moreover, children's rights cannot be realized in vacuum.

<sup>58</sup> the Juvenile Justice (Care & Protection of Children) Act, 2000

<sup>59</sup>(1991 AIR 417, 1990 SCR Supl. (2) 518

Successful social policies for children are crucial to our nation's future. The law is the engine to take policies and programs further. However, the realization of the rights depends on every member of the community and not 'on the long arm of the law' alone.

### **Public Interest Litigation**

PIL may be resorted to in order to ensure that the State performs its duty towards children. PIL has resulted in improving the conditions prevailing in child-care institutions, enforcing the implementation of the Child Labour [Prohibition and Regulation] Act, strengthening inadequate laws, setting aside discriminatory laws, etc. Generally, an aggrieved person files a petition before the Courts to redress his/her grievances. The concept of PIL recognizes that certain persons are unable to access this conventional mode of justice due to poverty, age or vulnerability, and it is therefore, imperative that some other person or organization is enabled to move the Courts to protect the rights of such persons. Children are unable by themselves to access the legal system and claim their rights. A public-spirited individual, or a non-governmental organization may file a PIL to ensure that a particular child or children are protected and ensured their legal rights.

A PIL is to be filed before the writ jurisdiction of the Supreme Court or the High Courts, and the opposite party is the Central or State Government, or any of its agencies. The Constitution enables the filing of PIL under articles 32 & 226; This article empowers the Supreme Court to intervene to enforce rights guaranteed by the Constitution.

Now that the convention is an international treaty entered into by India, a number of measures await to be taken, without further delay, to spread and deepen awareness, to monitor and redress violations and steadily to create social conditions and government capacity to prevent violations. For this to happen, the centre of gravity must shift from the rarefied ambience of central and state bureaucracies to the realities, of daily living. But before we come to that, child rights as a concept must be rescued from an attitude which views them as an abstraction, in order to stimulate a rights-based process of development of, and for children.

It is too late in the day for governments, international agencies and others in the field to work solely in terms of providing supplies or services, according to policies, plans and programmes, budgets, targets and schedules that suit them more than the interests of children and communities receiving such attention. If we take democracy seriously, children (as well as adults have a right to develop and therefore to necessary social support. Needs have to be met, not as charity but as a matter of right. With support, from the rest of society, at the local, provincial, national.

Many measures can be taken to ensure that child rights are not overlooked by adults in the daily decisions they take. A change in culture will not happen overnight still need to keep trying.

### **Conclusion;**

Children constitute the nation's valuable human resources. The future well-being of the nation depends on how its children grow and develop. The great poet Milton said "Child shows the man as morning shows the day". So it is the duty of the society to look after every child with a view to assuring full development of its personality. Children are the future custodians and torch bearers of the Society: they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society is founded. Unfortunately, millions of children are deprived of their childhood and right to education and thereby they are subjected to exploitation and abuse.

