

CHAPTER – I

INTRODUCTION

1.1 PRELUDE

The children are the greatest gift of God to man, our most precious and very important asset. They are apostles of peace and they are very much human beings with enormous potential to grow and develop into adult in future. They are not a commodity and hence cannot and must not be subjected to family monopoly.

Children are the foundations of human society. The shape of future human society shall be determined by their mental and physical well-being. 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 the 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.

In order to create a healthy society, to promote social progress and better standard of living, grooming children in the best possible coordinational family environment, an atmosphere of happiness, love and understanding is mandatory for the development of his or her personality. The child should grow in such an atmosphere that he is fully prepared to live as an individual, independent life with the prescribed ideal norms of ideal human society. But unfortunately, in spite of there being a 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 subjected to variety of exploitations, in spite of the fact that human society is claimed to be progressing, canvas of literacy is expanding, and innumerable branches of

knowledge, learning and enlightenment are being introduced. The Right of the child remained a big sing of interrogation.

Fortunately from the beginning of 19th century, some awareness has emerged, at both National and Global level, due cognizance appears to have been given to this challenge.

In India this consciousness is reflected in various provisions of the Constitution. Article 24 prohibits the employment of children in any factory or mine or in any other hazardous occupation. Article 39 (e) and (f) lays down that the 'State shall direct its policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment'.

Education of children has been recognized as a *sine qua non* for the growth of children. Accordingly, Article 21A provides that the 'State shall provide free and compulsory education for children who are between 6 to 14 years of age'. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country.

The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the welfare of children. The policy starts with a goal oriented perambulatory introduction.

"The nation's children are supremely important asset. Their nurture and solicitude are our responsibility. Children's Programme should find a prominent part in our national plans for the development of human resources. So that our children go up to become robust citizens, physically fit, mentally alert and normally healthy, endowed with the skills and motivations needed by the society. Equal opportunities for development of all children during the period of growth should be our aim, for this would, serve our large purpose of reducing inequality and ensuring social justice."

A wide range of laws guarantees to a substantial extent the rights and entitlements provided for in the Constitution of India and in the Convention on the Rights of the Child; they are:

The Apprentices Act, 1861;
The Child Marriage Restraint Act, 1929;
The Child Labour (Prohibition and Regulation) Act, 1986;
The Children (Pledging of Labour) Act, 1929;
The Guardian and Wards Act, 1890;
The Hindu Minority and Guardianship Act, 1956;
The Hindu Adoption and Maintenance Act, 1956;
The Immoral Traffic (Prevention) Act, 1956;
The Juvenile Justice Act, 1986;
The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960;
The Probation of Offenders Act, 1958;
The Reformatory Schools Act, 1897;
The Women's and Children's Institutions (Licensing) Act, 1956;
The Young Persons (Harmful Publications) Act, 1956;
The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992;
The Prenatal Diagnostic Technique (Regulation, Prevention and Misuse) Act, 1994;
The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Apart from these laws, mainly concerning children, a host of related welfare and criminal laws have beneficial provisions for the care and protection of children. Even the laws relating to commerce, industry and trade have protective provisions for children.

Johan Milton an eminent author in 'Paradise Regained' has rightly expressed the childhood by stating 'Childhood shows the man, as morning shows the day.'¹

To cherish and accomplish and dream of strengthening a nation, it is essential for a nation to protect the children who are its future citizens.² The children are to be protected and cared, as they are delicate and precious flower of life. It is undisputed that they are the potential embodiment of our ideals, aspirations, ambitions, dreams and hopes. The child for the full and the harmonious development of its personality should grow up in a very congenial family environment, in an atmosphere of happiness, love and understanding. Child in fact by virtue, of his physical and mental immaturity needs special safeguards and care including appropriate legal protection, before and after birth.

The childhood is the period when minds and bodies and personalities are being formed and when even temporary deprivation is capable of inflicting lifelong damage and distortion on human development. These vital and vulnerable years of childhood should as far as is humanly possible, be protected from the worst mistake and malignancies of the adult world. A child has only one chance to develop normally and the protection of that one chance should be given a first call on societies concerns and capabilities. There will always be something more immediate, there will never be anything more important.³

With this realization and high expectations from the children, who are to hold the world in the days to come, we as a society are under an obligation to develop, train and equip them with power, strength, abilities, insight, understanding and other important traits lest they fail in and run away from discharging their responsibilities which are sure to come on them in due course of time. It is here that the basic needs of every child must be met. He must be ensured to a standard of living which must be adequate for the development of

¹ Abdual Majid, Legal protection to unorganized Labour, Deep and Deep Publications Pvt. Ltd. 2000 at p 42

² Justice Palok Basu, Law Relating to Protection of Human Rights – Under the Indian Const. & Allied Laws, Modern Law Publ. 2002

³ See, The State of the world's children 1995 (summary)- A UNICEF publication, p.4.

all his faculties. At this juncture an emphasis has been laid on the development of respect of human rights and basic freedoms.⁴

The dawn of the 19th Century saw the emergence of a new awareness as to the separate legal status of a child. The 20th century further witnessed the most significant winds of change in the area of human rights of children. Thus, 'Juvenile Jurisprudence' as a branch of law emerged and various international conventions and laws of states emerged to afford protection to children. Particularly, the UN Convention on Rights of Child, 1989 focuses on different sets of rights of children.

It is therefore time to review and look back as how far we have protected the rights of our children who are the nation's most important assets. "We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need, can wait, the 'Child' cannot... to him we cannot answer 'Tomorrow'. His name is 'Today'⁵. Legally children are the citizens of tomorrow and on their proper development depends societal future. This is implicit in the right to live with dignity. The Supreme Court in Sheela Barse⁶ struck the right note when it observed:

The detention and maltreatment of children in violation of the law is far too serious a matter to be looked at with any complacency, and unfortunately a stage has now been reached where this court cannot be content with the expectation of compliance with its orders in these proceedings; but would have to go further and exact it. The States have to be more honest about their obligations to the delinquent children. Children misbehave because, perhaps, the society and the elders have behaved worse. Society is becoming increasingly inhospitable by ignoring the non-custodial alternatives prescribed by law and exposing the

⁴ See, Shrinivas Gupta, 'Human Right of the Child and Judicial Activism in India,' published in the Central Indian Law Quarterly 1994, VII, pp. 133-168, p.133.

⁵ Gabriela Mistral, Nobel Prize Winner

⁶ AIR 1986 SC 1773

delinquent child to the trauma of custodial cruelty, the State and the society run the serious risk of sending the child to the criminal clan. This is not more a matter of concession to the child, but its constitutional and statutory right.⁷

The two great international instruments, namely, the Declaration and the Convention, are central to the jurisprudence of the child. But beyond these two instruments the child deserves progress which should be measured by the world's current disposition towards the child and so it is that for a fortunate tomorrow every country has to show grave and yet practical concern for the child, from the unborn babe in the womb to the adolescent person struggling to build a niche where young personhood has work in the world.

“Humanity shows itself in all its intellectual splendour during this tender age as the sun shows itself at the dawn, and the flower in the first unfolding of the petals; and we must respect religiously, reverently, these first indications of individuality. If any educational act is to be efficacious, it will be only that which tends to help towards the complete unfolding of this life⁸.”

1.1.1 RELATIONSHIP OF CHILD RIGHT AND HUMAN RIGHT

Children's rights are the perceived **human rights** of **children** with particular attention to the rights of special protection and care afforded to the young,⁹ including their right to association with both **biological parents**, **human identity** as well as the basic needs for food, universal state-paid education, health care and criminal laws appropriate for the age and development of the child.¹⁰ Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from **abuse**, though what constitutes "abuse" is a matter of debate.

⁷ Supreme Court in Sheela Barse V/s Union of India (AIR 1988 SC 211)

⁸ Maria Montessori

⁹ http://en.wikipedia.org/wiki/children's_rights "Children's Rights", Amnesty International

¹⁰ http://en.wikipedia.org/wiki/children's_rights "Convention on the Rights of the Child". United Nations.1993-09-02

1.1.2 NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

In order to ensure child rights practices and in response to India's commitment to UN declaration to this effect, the government of India set up a **National Commission for Protection of Child Rights**¹¹.

The Commission is a statutory body notified under an Act of the Parliament on **December 29, 2006**. Besides the chairperson, it will have six members from the fields of child health, education, childcare and development, juvenile justice, children with disabilities, elimination of child labour, child psychology or sociology and laws relating to children.

The Commission has the power to inquire into complaints and take *suo motu* notice of matters relating to deprivation of child's rights and non-implementation of laws providing for protection and development of children among other things. Aimed at examining and reviewing the safeguards provided by the law to protect child rights, the Commission will recommend measures for their effective implementation. It will suggest amendments, if needed, and look into complaints or take *suo motu* notice of cases of violation of the constitutional and legal rights of children.

The Commission is to ensure proper enforcement of child rights and effective implementation of laws and programmes relating to children- enquiring into complaints and take *suo motu* cognizance of matters relating to deprivation of child rights; non-implementation of laws providing for protection and development of children and non-compliance of policy decisions, guidelines or instructions aimed at their welfare and announcing relief for children and issuing remedial measures to the state governments.

¹¹ wikipedia free encyclopedia

1.1.3 CHILD AS DEFINED UNDER VARIOUS LAWS

In India, the Census of India defines persons below the age of fourteen as children. When making use of standard demographic data, social scientists include females in the age group of fifteen to nineteen years under the category of the girl child. Most of the government programmes on children are targeted for the age group below fourteen years. According to the Constitution, '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'¹². The legal conception of a child has tended to vary depending upon the purpose. A few illustrations from the law in India are given below:

1. Criminal Law: Indian Penal Code, 1860 Nothing is an offence, which is done by a child under the age of 7 years¹³. The age of criminal responsibility is raised to 12 years if the child is found to have not attained the ability to understand the nature and consequences of his/ her act¹⁴. Attainment of sixteen years of age for a girl is necessary for giving sexual consent, which is not less than fifteen years in case she is married¹⁵.

¹² Article 23, constitution of India.

¹³ See section 82 of IPC

¹⁴ See section 83 of IPC

¹⁵ See section 367 of IPC

2. Juvenile Law: Juvenile Justice Act, 1960
A juvenile is a child who has not completed the age of 18 years¹⁶. A delinquent juvenile cannot be sentenced to imprisonment. If a juvenile who has attained the age of 16 years commits an offence of a serious nature and is found not to be in his interest or in the interest of other juveniles to send him to a special home then the juvenile court may order the delinquent juvenile to be kept in safe custody in such place and manner as it thinks fit¹⁷. Detention in police stations or jails is specifically prohibited under the Act.
3. Family Law: Child Marriage Restraint Act, 1926
Child means a person who, if a male, has not completed 21 years of age and, if a female, has not completed 18 years of age¹⁸.
4. Labour Law: Apprentices Act, 1961
A person is qualified to be engaged as an apprentice only if he is not less than fourteen years of age, and satisfies such standards of education and physical fitness as may be prescribed¹⁹.

¹⁶ See section 2(k) of JJA 2000

¹⁷ See proviso of section 16(1)

¹⁸ Section 2(a) of Child Marriage Restraint Act, 1929

¹⁹ See section 3 of The Apprentices Act, 1961

5. Factories Act, 1948 A child below 14 years of age is not allowed to work in any factory²⁰. An adolescent between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorised medical doctor²¹. A child between 14 to 18 years of age cannot be employed for more than four and a half hours²².

6. Mines Amendment Act, 1952 This Act defines the child as a person who has not completed the age of fifteen years²³. Its provision seems to be more stringent than Factories Act.

7. The Child Labour (Prohibition and Regulation) Act, 1986 Child means a persons who has not completed his fourteenth year of age²⁴.

8. Army Head quarters Regulations (a) The age of recruitment in the Army is from 16 to 25 Years. Persons, who are recruited at the age of 16 years, undergo, Basic Military Training for up to two-and-a-half years from the date of enrolment and are then inducted into regular service.

9. Indian Contract Act, 1872 A person below the age of 18 years has no capacity to contract²⁵.

²⁰ See section 67 of The Factories 1948

²¹ Ibid, section 68

²² Ibid, section 71(1) (6)

²³ See section 2(e) of The Mines Act, 1952

²⁴ See section 2(ii) of The Child Labour (Prohibition & Regulation) Act, 1986

²⁵ Section 11 Indian Contract Act, 1872

10. Provision of Free and Compulsory Education Article 21A of the Constitution states that the State shall provide for free and compulsory education for children between six to fourteen years.

The word "child" has been used in various legislations as a term denoting relationship; as a term indicating capacity; and as a term of special protection. These alternative specifications give different concepts about the Child. These include viewing children as a burden which invokes rights to maintenance and support; regarding children as undergoing temporary disabilities making for rights to special treatment and special discrimination; treating children as specially vulnerable for ensuring rights of protection; and recognizing children as resources for the country's development necessitating their nurturing and advancement.

1.1.4. AGE OF CHILD: A DILEMMA

Legal enactments invoke differential age-specifics, creating a dilemma whether the same human being is or is not a child and, depends upon the law which is being invoked in a given case. Given the fact that the deprived child's birth is either inadequately/ incorrectly recorded, the reliability and impact of the laws thus cannot be fully regulated in terms of age. The laws which relate to transgression by the child, are under the general rubric of

Juvenile, while distinguishes treatment vis-à-vis the adult, for offences like begging/ stealing/ drug taking/ peddling or crime. Free legal aid is available, under the Public Utility Litigation provisions. But the disparity between the age-identified child and the laws applicable in terms of maturity levels and the child's ability to articulate needs requires congruent thinking in policy, laws statements and their enactments.

The acceptance of the definition of the Child as given by the UN Convention on the Rights of the Child is likely to have implications on programme planning and budgetary provisions. The Government of India is, therefore, reviewing the legislation and is considering, adopting the definition of the child as stated in Article 1 of the Convention, wherever it is feasible and applicable, so that the rights of children are protected in the society under all circumstances.

1.2 OBJECTIVE AND SCOPE OF THE STUDY

The National and International protection of children finds its justification in the fact that, that regardless of their geographical or cultural origin, children are prey to exploitation. Children's victimization in its different expression is a constant feature of practically all societies. A correct analysis of the children's situation is only possible when we consider it in its real dimensions.

Broadly speaking problem of children can be divided into two groups. First of all there are those that concern exclusively children; secondly there are those problems that are common to entire populations, but against which children require special care in virtue of their mental and physical weakness.

To the first group belong all the wide range of forms of child exploitation, abuse and neglect. Child Labour is very common kind of exploitation. It evokes images of children working in factories, mines or attending domestic jobs in conditions of quasi slavery. This leads to violation of Childs basic rights most commonly the right to attend a school, thus to receive a proper education.

A most recent phenomenon is that of the so-called street children. These are children who work in the streets of big cities, where they attend activities like hawking, shoe shining, scavenging of raw materials, car parking help, and some times end up as petty criminals or street prostitutes. Many of them experience personal violence; they are frequently robbed and must pay other people for "protection". Because of this existence on the brink of society they generally

suffer from very low-esteem which endangers their mental capacity to have personal contacts outside the "work" environment.

Another notorious plight is that of sexual exploitation. It mainly consists of child prostitution and pornography. In similar cases we can affirm that children are exploited twice; once by the pimps or by the persons who make money out of their "services"; second time by those who buy that kind of literatures or spending money on that sort of physical entertainment, not to mention International sex tourists, boost this awful market. Besides, there are persistent reports of children being sold, kidnapped and drugged for purposes of prostitution and pornography.

A second group of problems that particularly affect children are those deriving from disasters. Whether man-made, like armed conflicts, or natural, like volcanic eruptions and earthquakes or belonging to the new-born third category of ecological disasters, like radioactive contamination or, in certain cases, desertification. These events have the characteristics of upsetting, for a consistent period of time, the life of those who dwell in the affected areas. As a result of catastrophes entire populations may be uprooted and compelled to resettle in different places. Occasionally resettlements may prove difficult; other times they may be delayed indefinitely. For these reasons, these unlucky people find themselves in sort of limbo, just waiting for something to happen. That is especially the case of refugee populations.

Children are outstandingly distressed by such happenings. The immediate physical threat is notably bigger for them than for adults. They are especially vulnerable to under nutrition and to respiratory, gastro-intestinal and other epidemiological illness that develop in time of calamities. Even more disaster-stricken children are prone to become accompanied to witness violence, sometimes even death of family. Needless to say, such traumatic experiences can make these minors psychologically unstable and needy of special care.

The study emphasizes on the various dimension of the problems faced by children. Number of children who experience particularly harsh life conditions goes up to several tens of millions. Let us show some of the data available: a 1985 Anti-Slavery society's study on street children, based on demographic deduction, gave an estimated number of about 8 million children literally living and of other 24 million working in the streets. Report of the United Nations High Commissioner for Refugees (UNHCR) and of the United Nations Relief and Works Agency for Palestine Refugees in the near East (UNRWA) calculate that in 1986 in the whole world there were some 12 to 14 million refugees and that number would rise to 25 to 30 million taking into consideration also the internally displaced persons. Half of them were children- the overall number of children dying each day is of about 40,000.

It is now seriously felt that immediate action need to be taken by all agencies, Government and non-government to provide special facilities for the deprived sections of the society for promotion of the Childs well-being, social, spiritual, moral, physical and mental, because every child has the right to life and well being, health care, nutritious food, clean water and shelter, protection from conflict, neglect and injustice, education to acquire knowledge, develop confidence and enjoy opportunities, love and support of a family, free access to information and freedom of expression, freedom of thought, conscience, religion and cultural identity. These human rights have been recognised as legal rights of children at the International and National level viz; right to education with nutrition, survival, protection, development and participation.

These rights have been given, not realized. These are not the general rules, these are exceptions. These rights are not a reality at present, but are dreams to be realized in future. This is the agenda for the nation and for the mankind. Implementing the rights of children in practice is essential and desirable for happier and prosperous new world order.

The main objective of my study is to analyze the international and national instrument on the Rights of child in view of violation of child rights. And to critically analyze:

- How far these instruments are effective in realization of above mentioned Rights?
- How much there is the implementation of standards and measures mentioned in the instrument?
- Up to what extent the India has observed these standards and measures in their domestic policies?
- What steps could be taken for the realization of these rights.
- Whether family, community, society, State, Nation, Governmental and Non Governmental organization can play some role for the achievement of goals provided in the part third and fourth of the constitution pertaining to children?

The researcher in the present study has tried to lay emphasis to provide a comprehensive and authentic review of various statutory provision so as to know the existing actual position of children under the various civil and criminal laws, namely Constitutional Law, Labour Legislation, Contract Act, Partnership Act, Law of Tort, Income Tax Act, Procedural Law such as Civil Procedure Code, Indian Evidence Act and Family Laws, Indian Penal code, Criminal Procedure Code, Medical Termination of pregnancy Act, Juvenile Justice Act which have been invoked during the pre and post Independence era in India and International instruments on Rights Of Child.

1.3 HYPOTHESIS OF THE STUDY

This study is done after formulating the following main hypothesis.

- Due to lack of statutory provisions under the Constitutional law children below the age of 14 years are exploited by employing them in

employments, which are not, included in Part B of Schedule to the Employment of Children Act, 1938.

- Exploitation of a child is basically due to socio-economic problem and therefore legislation alone cannot check it.
- Lack of education and awareness among children and parents about the amenities, facilities and welfare programmes for which they are entitled to, under various enactment with in India and at International level.
- That, though the need for the protection and development of children are felt Nationally and Internationally, citizens/ adults must understand the necessity of Rights of Child for the social, economic and political empowerment of the nation.
- In spite of the fact that there are sufficient safeguards and multiple legislation, the problem of child labour and the civil and political rights available to a child seems to be inadequate for want of efficient execution of these legislation.
- That with the increase in technology the means for the exploitation of children has also increased.
- That despite judicial aliveness the child labour problem has remained the same because of restraints on it.
- Lukewarm attitude of the executives, in implementing the various schemes, policies, statues and legislations for the benefit of children, in general.
- Contractors always emphasish more on gain and this ultimately affect the betterment and welfare of their worker including child labour.

- With the development of industrial and urban culture, family structure has been reduced as a result of which children started getting less attention within a family relation.

1.4 SIGNIFICANCE OF THE STUDY

The Significance of this subject is that apart from providing various legislation dealing with the rights of child, an attempt has been made to tackle the problem by bringing forth various legislation relating to the civil political and criminal laws which gives right to a child to protect it's right. Under various civil, political and criminal legislation like Constitutional Law, Labour Legislation, Contract Act, Partnership Act, Law of Tort, Income Tax Act, Procedural Law such as Civil Procedure Code, Indian Evidence Act, Family Laws, Juvenile Justice Act, Indian Penal Code, Criminal Procedure code various suggestion have been made to combat with this problem.

Problem of giving adequate protection to a child in under developed and developing countries is quite high and somewhat abnormal, children of various age groups are put to severe hardship like seeking employment in large numbers in industries, hotel and other unorganized sectors where by they are deprived of health care, basic amenities of life. For children living in such pathetic conditions of fundamental rights in an independent country makes no difference to them.

Faced with such dilemma of life's whereby they are pushed into an environment which is not at all conducive for their well-being but due to circumstances which are beyond their control have pushed them to work in hazardous and difficult areas in order to sustain their life and that of their family members.

It is of course a rule that children are given the same basic rights as adults. However because of their physical and mental immaturity, children are vulnerable and they require special rights to protect and to meet their unique needs. It is because of this immaturity that children must postpone

the exercises of some civil and political rights until they become adults, increasing the obligation to adult to ensure that rights of the child are defended.

It is therefore argued that children should learn about their own rights. Every society hopes and expects that its children will grow up to become capable and responsible citizens who contribute to the well-being of their communities. Yet around the world, children are denied the right that could enable them to survive develop fully and participate actively.

In both developing and developed countries, children cope daily with street violence, pressure to use drugs sexual exploitation and abuses. They work long hours at jobs that are often damaging to their health without the opportunity for rest and recreation. Millions more who begin school never finishes. Even in countries where enrolment is increasing, children of ethnic and linguistic minorities' girls and children with disabilities, may find that their chance to receive an education is limited or non-existent.

Therefore, our study is more pointed towards various legislation, statues and International Instruments which are important to give adequate protection to a child right from his formative years like ensuring adequate protection to work as labour or his right to enter into a contractual relationship or to provide necessary safeguards under Partnership Act or rights of child not to be imprisoned etc. Even certain safeguards have been provided under constitutional law as well. And effort is made to show how the aforesaid legislation can make the child, shoulder the responsibilities of his family to earn for them, so as to make the nation more literate, responsible and law conscious.

Various laws have been enacted from time to time, constitutional provisions are amended, various seminar, conference are held to address this issue at national and international forum but gravity of problem remains the same.

Too many children still die of preventable deceases. Malnutrition has yet to be eradicated, access to clean water and sanitary facilities remains luxury in many places, in industrialists and developing countries the problem like pollution and environment degradation have caused various problems and in many parts of the world children of school age face conscription into armed forces, fortune, imprisonment and so on.

The magnitude of the problem and it's impact on the nation's future is understood by the law makers but the implementation machinery is not in place due to the prevalent socio-economic problem and hence the statue and legislation remain in letters but failed to make any impact in spirit for the ultimate protection of a child.

In this study an attempt is made to bring into focus, the exploitation of their tender age and multiple types of violence meted against the children in particular as well as general. At the same time whole of the study emphasizes on the rights of child under various civil, criminal and other welfare legislations with in the country and outside. Nevertheless, it also shows the way how the child can be protected from such violence's.

1.5 METHODOLOGY ADOPTED

As the study is socio-economic and legal in nature, historical, analytical and doctrinal methods are adopted. It is not possible to study purely by experimental method. As the children are the highly vulnerable section of the society they need special care and assistance. The study emphasise on the various related fields where they require care and assistance. These areas could be child's health, nutrition, standard of living, working conditions, rights to life, educational participation and protection etc.

The rights of child is derived from a set of human values and ethical premises that recognize the inherent dignity and inalienable of all members of the human

family. Accordingly, study states that the rights shall be extended to all children without discrimination of any kind, irrespective of the child's his or her parents or legal guardian's race, nationality, colour, sex, language, religion, political or other opinion, social origin, property, disability, birth or other status.

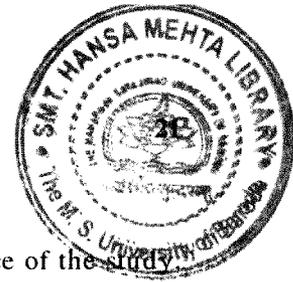
The study also draws particular attention to the fact that in all countries in the world, there are children living in exceptionally difficult circumstances and that such children need special consideration. It advocates measures for the protection and harmonious development of the child that are consistent with the tradition and cultural value of different peoples. The work will show how the various policies on child are helpful in bringing social progress and how far these policies are effective. Whether it has any negative impact on the well-being of child?

The study material on the rights of child have been gathered from the statutory enactments like, constitution of India, Labour, legislations, Transfer of property Act, Criminal Major Acts, various civil laws etc. published rules of International conventions and also rules evolved by judiciary from time to time for the protection of children, published works, journals both Indian and foreign, original judgments of the supreme court, the High Courts and various courts of India.

1.6 SCHEME OF THE STUDY

The present study is done with the intention to update self and others with the growing concern for the future citizen through various primary and secondary sources. Emphasis is also given to the Government and Non-Governmental agencies and also the role played by national and international organization for safeguarding the interest of children. It also studies the reason for ineffective implementation of the legislation.

The entire study has been divided into seven chapters.



The First Chapter includes the objective of the study, significance of the study, methodology adopted and Hypothesis formulated. Besides this it also speaks about the utility of the study.

It is common belief among historians and scholars of children's rights that childhood, as it is currently understood, is a relatively recent creation. Without challenging the validity of such argumentation, we can affirm that childhood as a socio-legal phenomenon is of ancient origin.

The Second Chapter deals with the evolution and historical background of rights of child , with reference to child in Ancient period, dark age, medieval period, Renaissance and modern era. Here the researcher had not forgotten to mention the historical child rearing perspective of child in India.

In this chapter the author has discussed the emergence of Rights of child. Initially there were no special rights for children, they were just treated as mini adult wholly dependent on adults for their activities.

In this chapter the Researcher tries to find out the actual condition and what, right of the child if any at different periods of time. She also brings out the causes for high mortalities rate among children, and how gradually the importance of child as national asset was felt. Then what steps are taken by state/ National Government for the survival, protection and development of the children is discussed in the Modern era.

The last part of this chapter shows how the child gained the International concern for its right to survival, protection, development and participation.

The Third Chapter is a gathering of various statutory laws pertaining to rights of child. Under constitution of India Article 21A, 23, 24, 39, 45 are of prime importance. Article 21A is amended by the 82nd Amendment to the constitution w.e.f. 2002. It is the cause and consequence of *Unni Krishnan case*²⁶. The *Asiad*

²⁶ AIR 1993 SC 2178

cas^{27e} had obliged the court to give direction to the constructor for the proper application of rules provided under employment of children Act 1938, and the order was given to various State Governments to make Amendment to the schedule to above mentioned Act i.e. inclusion of construction work in the hazardous occupation.

Apart from Constitutional provisions it contains number of labour legislation and other laws. The labour legislation has been discussed under two headings viz; preindependence legislation and postindependence legislation.

In the Fourth Chapter the author has included the International legislation on the Rights of child. At the international level it was felt that it is the right time to establish in law the obligations to children and youth to insure a safe and healthy future life. Our hope is our children.

The goal behind the international legislation is to establish a firm basis in law for what has hitherto been considered largely welfare and humanitarian concerns. Malnutrition, reproductive health, contraception immunization, programs, and care of the new born are some of the important areas to be considered in the overall concern of the child specialist.

The convention of the Rights of child (CRC) is a landmark. A landmark for human rights, a landmark for children nationally and internationally, a landmark for human progress and the gradual establishment of universal standards for civilization.

Unfortunately there are also provisions that cannot be seen as real improvements. The most notorious one is Art 38 which fixes minimum age for children to fight in wars at fifteen years. This obviously does not represent any

²⁷ AIR 1982 SC 1473

sort of guarantee for children worldwide. There are some conflict related to Article-21, 7 and 8 of CRC.

There is some criticism for the idea of codifying children's rights through international law. It is argued that the different views stemming from the cultural divergences of the drafter cause vagueness, over breadth, lack of comprehensive planning and bring about dilution of already established rights, but the convention is to be approached not as an attempt to group to gather the existing legislation concerning children's rights, or to substitute it. That will end up in cumbersome and useless instrument. No state would ever agree upon its ratification. The aim of convention is to set certain rules for the protection of minors, whose application will be monitored by a United Nation body. The hope is that by throwing the rights of the child in to the Human Rights arena they will be given major consideration.

The Fifth Chapter brings out the various forms of violation of rights of Child. These violations include those which are directly inflicted upon the children. Like sexual abuse, sexual exploitation, child labour, gender bias in education. Child because of its immaturity becomes easy prey of inflictors like pedophiles, pimps. In other form, the child rights are violated rather deprived because of their being negligent, delinquent, orphanage or refugee.

Chapter Sixth pertains to the role of the judiciary in the development of the child welfare scheme. Like in the matter of *Sivkasi*²⁸, the court directed the employers and the state to contribute equally to the fund maintained for children.

In *Salal*²⁹ hydro project case the court has imposed the obligation on the employer that children of worker must be provided atleast with non formal education. If workers are children they should be employed well with in the four

²⁸ AIR 1991 SC 419

²⁹ AIR 1987 SC 177

corners of law. Their working conditions, hours of work, health and rest intervals must be strictly according to the employment of children's Act.

Chapter Seventh consists of evaluation of the entire study with the assumed propositions and hypotheses and evolving the invaluable findings. The Chapter also deals with final conclusions, suggestions and recommendations; those would be useful in future legislations.

1.7 UTILITY OF THE STUDY

Nations children are its supremely important assets and the nation's future lies in their proper development. Investment in children is indeed an investment in Nations future. A healthy and educated child of today is the active and intelligent citizen of tomorrow. A child is the highest, latest and greatest conscious form of the perennial creative super-conscious expression of all the pervasive primordial inscrutable *grundnorm* of this universe. A child is the most innocent and helpless human creature incapable of either exercising or enforcing of even the conferred right.

Children are the greatest gift to the humanity. Children as a class constitute the weakest, the most vulnerable and the defenseless section of the human society. The children signify eternal optimism in the human being and always provide the potential for human development. But they are always at the mercy of their superiors in age even for sheer survival primarily they are protected not by human laws but by the sure operation of natural laws by which the parents are governed, namely inherent in exhaustive love and kindness, and the general human instinct. In the try-gone era every child was ensured, at the least, a winning home where he had been taken care of in the best way possible. But with increasing complexity of the social condition in India, those days are now like myths.

However, the incompetence and weakness of the parents necessitates the social intervention and obligation and state responsibility for the survival progress and

happiness of the children. Psychological disorders, erosion of social cohesion and looseness or snapping of marital bonds prompt state interference for the welfare of children in the affluent countries. In addition to the tendencies towards such social phenomena, the economic stark realities of penury and misery of the faceless mass of parents in the developing countries like India demand special recognition superior constitutional and legal status and protection of the children because of their tender age, physique, mental faculties and high potentialities for greater personal development and achievements.

Because of innocence and helplessness, the child is peculiarly susceptible to certain harms. He cannot raise his voice and enforce his rights against those who injure him or deprive him of his rights. It is this peculiar position of the child arising from his physical and mental disability and position of dependence that recognizes need for special provisions in many matters and the law must take care of all this in the interest and welfare of the child.³⁰ The protective arms of laws have, therefore, to be long and strong enough if distributive justice to the adults of tomorrow is to be secured. ³¹ It is an obligation of every generation to bring up children in a proper way. Every society 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 grow up. ³²

India's commitment to the cause of children is as old as its civilization. The child is believed to be a gift of the Gods, which must be nurtured with care and affection, within the family and the society. Unfortunately, due to socio-economic factors, the incidence of neglect, abuse and deprivation, particularly in the poverty afflicted sections of the society, has gradually increased.

³⁰ See, Also Shrinivas Gupta, "Judicial Attitude Towards Rights of the child" published in LINK News weekly (New Delhi), dated April 10, 1994

³¹ See, Sudesh Kumar Sharma, 'Child and the Constitution: An Appraisal in Distributive Justice Perspective,' SCJ May 1989 Vol.2 pp.9-10

³² Justice PN Bhagwati and C J RS Pathak in Sheela Barse V/s the Secretary children Aid Society (SCJ (1987) 1 p.585)

Such a scenario made it imperative to intervene to provide care and protection to children. The setting up of extra—familial institutions to provide care to the young, both in the governmental and voluntary sectors, became essential. In the mid—1920s, voluntary organizations such as the Indian Red Cross Society, the All India Women's Conference, the Kasturba Gandhi National Memorial Trust and the Children's Aid Society organized programmes in the areas of welfare, health, nutrition and education for children. Balkanji Bari, set up in 1920, was the first children's organization with child membership. Several other organizations were set up around this time, but these were on a sectarian basis, such as the All India Shia Orphanage, the Bai Dosabai Kotwari Pasi Orphanage, etc.

Child is a national asset. Every nation developed or developing is greatly concerned with the condition of all the aspects of the children's life; because they represented the future. The children of today are the future of tomorrow. To make the future beautiful these children should be taken care of. Therefore special law to protect them from exploitation and fraud, to save them from certain liabilities and to develop their personality in view of their weak position is required.

A child of today cannot develop to be a responsible and productive member of the future society unless he/ she is provided with an environment, which is conducive for all around development.

Therefore law should take care of all this in the interest and general welfare of child. The protective arm of the law has to be long and strong enough, if distributive justice to the adults of tomorrow is to be secured.

1.8 VARIABLES

1.8.1 ADOLESCENT:

A child who is between the age group of fifteen to eighteen years. It is the age when the young person is developing from child into adult.

1.8.2 ADULT:

A fully grown up person of eighteen years and above, who is capable of bearing legal right and duties.

1.8.3 CHILD:

Child means every human being below the age of eighteen year, unless, under the law applicable to the child, majority is attained earlier. In our country census of India treats persons below the age of fourteen as children.

1.8.4 CYBER CRIMES**1.8.4.1 Harassment through e-mails**

It is very similar to harassing through letters. Harassment includes blackmailing, threatening, bullying, and even cheating via email. E-harassments are similar to the letter harassment but creates problem quite often when posted from fake ids.

1.8.4.2 Cyber stalking

The Oxford dictionary defines stalking as "pursuing stealthily". Cyber stalking involves following a person's movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails etc. Cyber Stalking usually occurs with women, who are stalked by men, or children who are stalked by adult predators or paedophiles to telephone net.

1.8.4.3 Cyber pornography

This would include pornographic websites; pornographic magazines produced using computers (to publish and print the material) and the Internet (to download and transmit pornographic pictures, photos, writings etc).

1.8.4.4 Morphing:

Morphing is editing the original picture by unauthorised user or fake identity.

1.8.4.5 Email spoofing:

A spoofed e-mail may be said to be one, which misrepresents its origin. It shows its origin to be different from which actually it originates. A review in the CyberlawTimes.com shows that India has crossed the danger mark in cyber crime targeting women and children.

1.8.5 CHILD LABOUR:

Children employed as labourers in factories, mines, construction work, or any workshop. Child work per se does not amount to child labour. It is the element of exploitation by the employer leads to child labour in negative form.

1.8.6 CHILD MARRIAGE:

Marriage performed in violation of the Child Marriage Restraint (Amendment) Act, 1978. According to this Act the minimum age of marriage for girls is 18 years and for boys it is 21 years.

1.8.7 CHILD PORNOGRAPHY:

Child pornography refers to pornography depicting minors. The definition of "child pornography" differs from country to country. Most prohibit visual depictions of sexual activities involving actual children under a specified age. Some countries go further and prohibit all depictions of nudity of minors, whether or not the minor is depicted in an erotic pose or as engaging in a sexual act.

1.8.8 CHILD PRODIGY

A prodigy whose talents are recognized at an early age.

1.8.9 CHILD SEXUAL ABUSE/ SEXUAL EXPLOITATION

Child sexual abuse is the sexual assault of a minor or, a sexual activity between a minor and an older person in which the dominant position of the older person is used to coerce or exploit the younger.

1.8.10 CHILD TRAFFICKING:

Child trafficking implies buying and selling of children as if they are chattels. The worst of worst type of child trafficking is the involvement of the child in the flesh trade.

1.8.11 DELINQUENT JUVENILE:

A young person, who is not an adult and who is guilty of committing a crime.

1.8.12 DOLI INCPAX

Children below the age of seven is said to be doli- incpax because he is presumed to be void of Mens-Rea. Child under this age group is granted absolute immunity from every criminal liability under IPC or any other law.

1.8.13 ETHOLOGY :

An approach concerned with the adaptive, or survival, value of behaviour and its evolutionary history.

1.8.14 FETICIDE:

The act of preventing child from being born alive or causing the death of quick unborn child within the womb of mother.

1.8.15 FETUS:

The prenatal organism from the beginning of the third month to the end of pregnancy, during which completion of body structures and dramatic growth in size takes place.

1.8.16 INCEST:

A Sexual activity between two people who are very closely related in a family e.g., a brother and sister, or a father and daughter.

1.8.17 INFANTICIDE:

Infants are the children who are between the age group of zero to one year. Infanticide is the intentional act of causing death to infants. This is mostly used for girl child.

1.8.18 INTER COUNTRY ADOPTION:

Where the adoption take place internationally i.e. Adoptee and adopter.

1.8.19 JUS SANGUINIS:-

Granting of nationality on the basis of decent.

1.8.21 PRODIGY

An unusually gifted or intelligent (young) person; someone whose talents excite wonder and admiration.

1.8.22 REFUGEE:

In general terms refugee means those people who are abandoned in their state. According to the convention on the status of refugees, 1954 any person who:-
As a result of events occurring before 1 January 1951 and owing to well founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing such fear is unwilling to return to it.

1.8.23 STATELESS CHILD:

It is the state where the individual loses his legal tie with his country of origin and fails to acquire new one. And a child born to stateless person is stateless. There are many other situations where the children are treated as stateless effectively.

- a) If a child birth is not registered because of the parent's failure to do so or because the authorities refuses to register the birth.
- b) If a child is born in a refuge camp or to parents who are refugees asylum seekers or migrant workers and if the birth is not registered with the authorities.
- c) If a child is born in a country of asylum and the registration of that birth is no accepted by the authorities in the child's country of origin and
- d) If a child is born during a civil or international war, or during the process of state dissolution and the authorities are unable to or unwilling to register the birth.

1.8.24 TABULA RASA JOHN LOCKE (1632 - 1704):

According to Locke the child is like a tabula rasa ie. blank slate or white piece of paper-whose character is shaped by experience. Children were viewed as passive, mechanistic terms.

1.8.25 ZYGOTE :

Union of sperm and ovum at conception.

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