CHAPTER-III

CONSTITUTIONAL

PERSPECTIVE VIS-A-VIS

JUVENILE JUSTICE
Chapter-III

Constitutional Perspective Vis-à-Vis Juvenile Justice

The Constitution has over two hundred articles that address the child, directly or indirectly. The Indian constitution is law of the land or it is basic law of the land. The Constitution of India guaranteed fundamental rights without any bar on account of race, religion, caste, sex, and place of birth. The Constitution framers were quite alive and fully aware to the problems of the weaker section of the society. Protective legislation to give them social security was considered to be judged by the standards by which it treats the weaker section properly. Equalitarian approach of the Constitution framers resulted in intensive legislative fiat in the post-independence era. Fundamental rights guaranteed under Chapter III and IV of the Constitution is for men and women including the children as under.

Juvenile Justice Policy in India is largely governed by the constitutional mandate given under Article 15 that guarantees special attention to children through necessary and special laws, policies, and safeguards their rights. The right to equality, protection of life and personal liberty and the right against exploitation is enshrined in 15(3), 21, 21(A), 22(1), 22(2), 23, 24, 37(e), 37(f), 45, 47 and 51A(k) of the Indian Constitution. The Constitution of India recognizes the vulnerable position of children and their right to protection.

The course of events concerning juvenile justice in this country was equally influenced by several international developments. It primarily includes the United Nation Convention of the Rights of the Child (UNCRC) 1989, the United Nation Standard Minimum Rules for the Administration of Juvenile Justice. The Beijing Rules, 1985 Driven by constitutional guarantees for protecting children as well as recognizing international concern for child, the Indian state has made numerous arrangements in this direction.

3.1 Preamble of the Indian Constitution:

The Preamble highlights few fundamental values and guiding principles on which the Constitution of India is based. It serves as the guiding light for both, the Constitution as well as the judges who interpret the Constitution in its light. The
opening few words of the Preamble "We, the people" signifies that the power is vested in the hands of the people of India. The Preamble is as follows:

The Constitution also promises to all its citizens Justice, social, economic and political; Liberty of thought expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual. By an amendment in 1976 the aims of establishing secularism and socialism and promoting the unity and integrity of the nation were proclaimed. Initially the preamble was not treated as a part of the Constitution but the Supreme Court has given important decision in the case of Kesavananda Bharati v. State of Kerala found that it to be part of the Constitution and can be used in interpret ambiguous areas of the Constitution. The words "Socialist" and "Secular" were introduced in 42nd amendment.

**Sovereign** It means supreme or independent. The country is both, internally as well as externally sovereign. Externally it is free from any foreign power and internally it exercises a free government directly elected by the people and makes laws that govern the people.

**Socialist** word was added by the 42nd amendment act of 1976. It implies to social and economic equality. Social equality means there is no discrimination on the grounds of caste, color, creed, sex, religion, language, etc. Each one enjoys equal status and opportunities. By economic equality it means that the government will endeavour for equal distribution of wealth and to provide a decent standard of living for all, hence a commitment in forming a welfare state. Abolition of Untouchability and Zamindari, the Equal Wages Act and the Child Labour Prohibition Act were few steps taken by the government in this context.

**Secular** word was inserted by the 42nd amendment of 1976. Secular implies equality of all religions and religious tolerance. No state in India has an official state religion. Anybody can preach, practice and propagate any religion of his or her choice. In the eyes of law all citizens are equal irrespective of their religious beliefs. No religious instruction is imparted in government schools or government-aided schools.

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1 AIR 1973 SC 1461
Democratic means that the governments of all levels are elected by the people through a system of universal adult franchise. Every citizen irrespective of caste, creed, color, sex, religion or education who is 18 years of age and above is entitled to vote, if not debarred by law and Republic means that the head of the state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by Electoral College for a fixed period of five years.

The Constitution not only made the people the ultimate masters of their destiny, but it also made them equal. The traditional Indian social system, fragmented by religious and ethnic differences and stratified by caste, lost its legitimacy. Individual human beings became the fundamental units of polity. All political and economic rights were granted to the individuals. At the same time, some cultural rights were granted to the minority groups.

3.2 Protection of children under Fundamental Rights:

Under Indian constitution fundamental rights are most valuable, these rights are mainly highlighted under Art. 12 to 32 like right of equality before law and equal protection of law, freedom to speech and expression, protection against illegal detention and rights of the accused, right to life and personal liberty, right against exploitation, freedom of religion, rights of the minorities and remedies for violation of fundamental rights.

The equality is maintained under Indian constitutional law by various articles, like equality before law and equal protection of law\(^2\). The most significant as it gives power to the State for making special provisions for women and children. The interests of women and children are carefully and clearly protected under the Constitution, as the women in India were accustomed to an excessive sheltered life and the situation further aggravated due to poverty and illiteracy which subject them to easy target for exploitation. The social security legislation has attempted much for the betterment of the women and tried to improve their position. The most important provision in this regard is in Indian Constitution\(^3\).

The Ministry of Women and Child Development has been instrumental in this direction and it has particularly catered to children in crisis situation such as street

\(^{2}\) Art. 14 of the Indian Constitutional Law
\(^{3}\) Ibid Art. 15 (3)
children, children who have been abused, abandoned children, orphaned children, children in conflict with the law, and children affected by conflict or disasters, etc. The official stand on child protection is marked by many programmes, in keeping with the current developments, is visible in the approach of the Ministry of Women and Child Development.4

Directive principles of the State Policy contained in Part IV of the Constitution, to the extent of directing the State to help citizens to maintain and safeguard their life with human dignity. Right to health, food, shelter, legal aid, fair trial, clean environment have all been held by the Supreme Court to be parts of inalienable ‘right to life and personal liberty’ of every person. Fundamental rights guaranteed under Part III of the Constitution of India, including the right to freedom of speech and expression and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity.6

Right to Education:

The Right to Education received considerable impetus during the last decade as a result of the concerted effort of many groups and agencies that made determined efforts to ensure that all children in India receive at least minimum education irrespective of their socioeconomic status and their ability to pay for education in a situation of continuous impoverishment and erosion of basic needs. The Campaign against Child Labour, the National Alliance for the Fundamental Right to Education, the contribution of several outstanding educationists, hundreds of civil society initiatives and most importantly the Judgements of the Supreme Court are among those who made this vital contribution to enshrine the right to education as a fundamental right. Through this combined effort, children of India gained the Fundamental as a Right to Education, first through Judgment made law and then through a Constitutional amendment. Unfortunately the introduction of this Article7 watered down the Judgment of the Supreme Court in the landmark case of Unnikrishnan. A Right which was available to all children up to the age of 14 years

4 The National Plan of Action for Children 2005
5 Ibid Art. 21.
7 Art. 21 A of the Indian Constitution
was reduced to a right for children in the age group of 6 to 14 only through the restrictive language of the Constitutional amendment.

Education is essential for every person, to live with basic human dignity. Education liberates man from ignorance, exploitation and oppression. It promotes freedom, progress and equal opportunities for all citizens. Therefore, education has been looked upon as the most precious and meaningful investment for human development. The stage is under the constitutional obligation to secure right to education to all citizens and for its equitable distribution in terms of opportunities.

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At the time of framing of the Indian Constitution, the right to education could not be guaranteed as a fundamental right except as a directive to State to secure right to education under Art. 41, due to the economic incapacity and lack of development at that time. Only recently, through the 86th Constitution Amendment Act 2002 that one of the directives under Art. 45 has elevated as a Fundamental Right to education under Art. 21A. However, the Constitution under Art. 46 directed the State among other things to promote with special care the educational interests of weaker sections of people.

Thus, the constitution has made provisions for advancement of educational interests of citizens and for taking special care of the socially and educationally backward classes. Further, the finer points of general education, school education, professional education and higher education were not made out clearly. The Constitution through Art. 15 and 29 (2) ensured equal opportunity in admissions into educational institutions. Art. 15(3) enable the State to make special provisions even with regard to education in favour of women. Art 15(4) empowered the State to make special provisions for the advancement of socially and educationally backward class with regard to admissions into educational institutions for historical reasons. Art 26
(a) also extends a fundamental right to every religious denomination or any section thereof to establish and maintain institutions for religious and charitable purposes. Art 29 ensured a right to all the citizens to conserve distinct language, script or culture and may even include their right to establish educational institutions for that purpose. The right to establish and administer educational institutions has been guaranteed to the minorities as a fundamental right under Art.30.

The constitutional right of education has to be so exercised as to achieve not only well being of the citizens in their future intellectual, social and economic life, but also to inculcate among them a sense of individual and social consciousness for the contribution of the welfare and prosperity of our secular society, unity and integrity of the nation. The policy of Education is to build up fraternity and feeling of brotherhood but not to make it remain as a pious hope. It should not stand as a barrier to the evolution of India as a strong nation. The Constitutional goal of promoting fraternity assuring the dignity of individual and unity of the nation is of paramount importance and is above all the Fundamental Rights.

Many developments have taken place during the past half-century in the working of the Constitution in the sphere of education. The policy of liberalization, privatization and globalization has made an immense impact on education in India. At present, the education imparted by the State and the one offered by the private sector including minority educational institutions are coming into conflict in terms of quality, standard, cost and excellence. The encouragement given by the Government to the corporate schools, sometimes at the cost of traditional educational institutions, has come up for an intensive discussion and debate. The Government appears to be distancing itself from offering higher education and slowly, gradually, retaining only a nominal control over it, consequently leaving the entire field open to the private and corporate sector.

A number of issues came up before the judiciary for its consideration like the status of right to education, scope and limits of protective discrimination, identification of socially, educationally backward classes, its scope under various fundamental rights, meaning and content of the expression "minorities" in Article 30, right to establish and administer educational institutions, the scope of "of their choice" under Article 30(1), and power of the State and professional bodies to regulate the
private and minority educational institutions in imparting general and professional education, power of state to impose regulations for maintaining academic and professional standards and its power of affiliation, recognition and grant-in-aid, etc. That apart, constitutional distribution of legislative power in a dual polity under the constitution and legislations made by the Parliament and state legislatures for regulating professional and general education occasionally gave rise to important and difficult legal controversies.

The theory of the complementarities of rights and their harmonious nature has laid the foundation for the realization of primary education being declared a fundamental right, through two judgments of the Supreme Court. The use of education as tool for achieving socio-political justice was largely ignored until the judgment in this case the Court held that, "the right to education flows directly from the right to life" as the right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

- **Awareness about Right to Education:**

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While giving response to this question out of total respondents 89% respondents said that they are aware of the right to education as fundamental right and provided to the children in conflict with law. Whereas 11% respondents said that they are partly aware of this right.

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal. Education emancipates the human beings and leads to liberation from ignorance.

An international convention on 'the right to education' has a more limited history. A private organisation, the International Bureau of Education, was established in Geneva in 1924 and was transformed into an inter-governmental organization in 1929 as an international coordinating centre for institutions concerned with education. A much broader approach was chosen, however with the establishment of UNESCO in 1945. United Nations, on 10th December, 1998 adopted Universal Declaration of Human Rights. The UDHR stated that: every individual and organ of society shall strive by teaching and education to promote respect for these rights and freedoms” In accordance with the Preamble of UDHR, education should aim at promoting human rights by importing knowledge and skill among the people of the nation states.8

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8 Preamble of Universal Declaration Of Human Rights.
UDHR proclaims that, "Every one has a right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

This Article states that Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace. Further, it provides that parents have a prior right to choose the kind of education that shall be given to their children. "The right to education has also been recognized by the International covenant on Economic, Social and Cultural Rights."  

The states parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and sense of its dignity, and shall strengthen the respect for human right and fundamental freedoms. This Article further provides that the states Parties to the present covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;
(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

9. Article 26 (2) of Universal Declaration of Human Right.
10 Article 26 (3) of Universal Declaration of Human Right.
11 Art. 13 (1), (2) of Universal Declaration of Human Right.
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

During the general discussion by the committee on Economic, Social and Cultural Rights on the right to education (1998), an agreement was reached that four elements define its core content:

- No one shall be denied a right to education;
- Everyone is entitled to basic (primary) education in one form or another; this includes basic education for adults. Primary education must be compulsory and free. No one may withhold a child from primary education. A state has an obligation to protect this right from encroachment by third persons;
- The minorities have the right to be taught in the language of their choice, in institutions outside the official system of public education. UNESCO has adopted a number of normative documents, conventions and recommendations ensuring the enjoyment of the right to education for everyone.

The best known among these is the Convention against Discrimination in Education, which was adopted on 14th December 1960 by the General Conference and which entered into force in 1962. The role of international organisation regarding the implementation of the right to education is just not limited to the preparation of documents and conducting conferences and conventions but it also undertakes the operational programmes assuring, access to education of refugees, migrants, minorities, indigenous people, women and the handicaps. India participated in the drafting of the Declaration and has ratified the covenant. Hence India is under obligation to implement such provisions.

Article 46 declares that the state shall promote with special care the educational and economic interests of the weaker section of the people. It is
significant to note that among several Articles enshrined under Part IV of the Indian Constitution, Article 45 had been given much importance as education is the basic necessary of the democracy and if the people are denied their right to education then democracy will be paralyzed; and it was, therefore, emphasized that the objective enshrined under Article 45 in Chapter IV of the Constitution should be achieved within ten years of the adoption of the Constitution. By establishing the obligations of the state the Founder Fathers made it the responsibility of coming governments to formulate a programme in order to achieve the given goals, but unresponsive and sluggish attitude of the government to achieve the objective enshrined under Article 45 belied the hopes and aspirations of the people. However, the Judiciary showed keen interest in providing free and compulsory education to all the children below the age of fourteen years.

In case of Mohini Jain V State of Karnataka\(^\text{12}\), the Supreme Court held that right to education is fundamental right under Article 21 of the Constitution. The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed Right to life is compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to life under Article 21 and the dignity of the individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to provide educational facilities at all levels to its citizens.

In case of Unni Krishan V State of Andhra Pradesh\(^\text{13}\) the Supreme Court was asked to examine the decision of Mohini Jain's case. In the present case the Apex Court partly overruled given in the Mohini Jain\(^\text{14}\) case. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principle of State Policy contained in Articles 41, 45 and 46. The Apex Court, however, limited the State obligation to provide educational facilities as follows.

\(^{12}\) (1992) 3 SCC 666
\(^{13}\) (1993) 1 SCC 645.
\(^{14}\) (1992) 3 SCC 666
(i) Every Citizen of this Country has a right to free education until he completes the age of fourteen years;

(ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the state.

Further the Supreme Court in M.C. Mehta V State of Tamil Nadu\textsuperscript{15} the Supreme Court observed that, to develop the full potential of the children they should be prohibited to do hazardous work and education should be made available to them. In this regard the Court held that, the government should formulate programme offering job oriented education so that they may get education and the timings be so adjusted so that their employment is should not be affected. Again in Bandhua Muti Morcha V Union of India\textsuperscript{16}, Justice K. Ramaswamy and Justice Sagir Ahmad, observed, illiteracy has many adverse effects in a democracy governed by rule of law. Educated citizens could meaningfully exercise his political rights, discharge social responsibilities satisfactorily and develop spirit of tolerance and reform.

Therefore, compulsory education is one of the states for stability of democracy, social integration and to eliminate social evils." The Supreme Court by rightly and harmoniously construing the provision of Part III and IV of the constitution has made right to education a basic fundamental right. Besides, this several states have enacted legislation to provide free and compulsory primary education such as- the Kerala Education Act 1959, the Punjab Primary Education Act 1960, the Gujarat Compulsory Primary Education Act 1961, U.P. Basic Education Act 1972, Rajasthan Primary Education Act 1964, etc.

However, the Constitution of India and Supreme Court have declared that the education is now a fundamental right of the people of India, but it does not speak about millions of children who are in the age group of 0-5 years. It is needed that the Constitution should again be amended and the children of age group of 0 -5 years should be included; as by the time the child reaches the age of 6 years he/she gets in to the child labour due to the poverty. Moreover the Constitution only ensures that the state shall provide primary education to the children up to the age of 14 years, and the secondary and higher education is contingent and conditional upon the economic

\textsuperscript{15} AIR 1991 SC 417
\textsuperscript{16} AIR 1997 SC, 2218.
capacity of the state. The right to education will be meaningful only and only if the all the levels education reaches to all the sections of the people otherwise it will fail to achieve the target set out by our Founder Father to make Indian society an egalitarian society.

Recently one of the important Bill is passed by the Indian Government in the name of Right to Education Bill, on July, 2009 and the enforcement of the Bill is from 1sr April, 2010. This Bill shows the following important features\textsuperscript{17}

The salient features of the Right of Children for Free and Compulsory Education act are-

\begin{itemize}
  \item Free and compulsory education to all children of India in the six to 14 age group;
  \item No child shall be held back, expelled, or required to pass a board examination until completion of elementary education;
  \item A child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.
  \item Proof of age for admission: For the purposes of admission to elementary education. The age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No child shall be denied admission in a school for lack of age proof
  \item A child who completes elementary education shall be awarded a certificate;
  \item Calls for a fixed student-teacher ratio;
\end{itemize}

\textsuperscript{17} Right to Education Bill, 2009
- Will apply to all of India except Jammu and Kashmir;
- Provides for 25 percent reservation for economically disadvantaged communities in admission to Class One in all private schools;
- Mandates improvement in quality of education;
- School teachers will need adequate professional degree within five years or else will lose job;
- School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
- Financial burden will be shared between state and central government.

The Government of India by had added a new Article 21A which provides that "the state shall provide free and compulsory education to all children of the age of 6 to 14 years as the state may, by law determine". And further strengthened this Article 21A by adding clause (K) to Article 51-A which provides who is a parent or guardian to provide opportunities for education to his child or ward between the age of 6 and 14 years. On the basis of Constitutional mandate provided in Article 21A, and various judgments of the Supreme Court. The Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the school for one or the reasons. Some of these programmes are National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid- Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives.

**Protection against arrest and detention:**

India is one of the few countries in the world whose Constitution allows for preventive detention during peacetime without safeguards that elsewhere are understood to be basic requirements for protecting fundamental human rights. For example, the European Court of Human Rights has long held that preventive detention, as contemplated in the Indian Constitution, is illegal under the European Convention on Human Rights regardless of the safeguards embodied in the law. South Asia Human Rights Documentation Centre (SAHRDC), in its submission to the

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NCRWC 19 in August 2000, recommended deleting those provisions of the Constitution of India that explicitly permit preventive detention.

Specifically, under Article 22, preventive detention may be implemented ad infinitum whether in peacetime, non-emergency situations or otherwise. The Constitution expressly allows an individual to be detained without charge or trial for up to three months and denies detainees the rights to legal representation, cross-examination, timely or periodic review, access to the courts or compensation for unlawful arrest or detention. In short, preventive detention as enshrined under Article 22 strikes a devastating blow to personal liberties. This article highlights on the followings-

(i) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(ii) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

It also runs afoul of international standards. Article 4 of the International Covenant on Civil and Political Rights (ICCPR) which India has ratified admittedly permits derogation from guaranteeing certain personal liberties during a state of emergency. The Government, however, has not invoked this privilege, nor could it, as the current situation in India does not satisfy with standards set forth in Article 4. If preventive detention is to remain a part of India’s Constitution, it is imperative that its use be confined to specified, limited circumstances and include adequate safeguards to protect the fundamental rights of detainees. Particular procedural protections are urgently needed

(i) to reduce detainees’ vulnerability to torture and discriminatory treatment;

(ii) to prevent officials' misusing preventive detention to punish dissent from Government or from majority practices; and

(iii) to prevent overzealous government prosecutors from subverting the criminal process. In pursuit of these goals, SAHRDC made the following recommendations in its submission to the NCRWC:

**Right against Exploitation:**

Article 23 of the Constitution Guarantees right against exploitation; prohibits traffic in human beings and forced labour and makes their practice punishable under law. Article 24 of the Constitution Prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Indian Penal Code, 1860 there are 25 provisions relevant to trafficking;

Trafficking in human beings, especially in women, and children has become a matter of serious national and international concern. Women and children, boys and girls have been exposed to unprecedented vulnerabilities commercial exploitation of these vulnerabilities has become a massive organized crime and a multimillion dollar business. Nations are attempting to combat this trade in human misery through legislative, executive, judicial and social action. Trafficking of children is a worldwide phenomenon affecting large numbers of boys and girls every day. Children and their families are often lured by the promise of better employment and a more prosperous life far from their homes. Others are kidnapped and sold. Trafficking violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse. In India too, over the last decade, the volume of human trafficking has increased though the exact numbers are not known, it is one of the most lucrative criminal trades, next to arms and drug smuggling undertaken by highly organized criminals. Unless a public opinion is built laws are effectively designed and implemented, the situation is constantly monitored and the nexus of traffickers is exposed, children will continue to be trafficked. Coordinated efforts are required to stop and prevent child trafficking.

The Oxford English Dictionary defines traffic as 'trade, especially illegal as in drugs. It has also been described as 'the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc. The word trafficked or trafficking is
described as ‘dealing in something, especially illegally as in the case of trafficking narcotics’. The most comprehensive definition of trafficking is the one adopted by the UN Office of Drugs and Crime in 2000, known as the “UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” 2000 under the UN Convention against Transnational Organized Crime UNTOC. This Convention has been signed by the government of India.

The Constitution of India guaranteed fundamental rights without any bar on count of sex. The Constitution frames were quite alive and fully aware to the problems of the weaker section of the society. Protective legislation to give them social security was considered to be judged by the standards by which it treats the weaker section of its polity. Equalitarian approach of the Constitution framers resulted in intensive legislative fiat in the post independence era. What woman has achieved after great struggle in Europe was well incorporated in the provisions of the Constitution itself. Fundamental rights guaranteed under Chapter III of the Constitution are for men and women alike. This Article is most significant as it gives power to the State for making special provisions for women and children. The interests of women and children are carefully and clearly protected under the Constitution, as the women in India were accustomed to an excessive sheltered life and the situation further aggravated due to poverty and illiteracy which subject them to easy target for exploitation. The social security legislation has attempted much for the betterment of the women and tried to improve their position

Article 23 provides prohibition of traffic in human being and forced labour and any contravention of this provision is an offence punishable in accordance with law. The expression ‘traffic in human being’ has been held to include not only slavery but also traffic in women for immoral purposes. With a view to protect the women, The Suppression of immorral Traffic in Women and Girls Bill was passed as early as 1956 which has been amended and renamed as immoral Traffic (Prevention) Act 1986. The purpose of this enactment is to inhibit of abolish commercialized vice namely the traffic in person for the purpose of prostitution as an organized means of living it does not punish a person because he or she prostitutes himself. To live on the earnings of a prostitute is prohibited under the enactment.

20 Ibid Art. 15 (3)
While keeping in mind the constitutional requirements the Legislature has enacted from time to time a number of statutory provisions, protecting interests of children of tender age working as child labour. Child labour problem is the most glaring example of exploitation of children at the hands of employer. It is easier for the employer to exploit a female child labour. Children, undoubtedly need special legal protection, so that they do not fall victims of exploitation and cruelty at the hands of other members of the society. Founding fathers of the Indian Constitution had complete awareness as to the weak position of children in poverty stricken illiterate society. Therefore, Art 24 reads as follows no child below the age of fourteen years shall be employed to work in any factory or mine of engaged in any other hazardous employment.

It also provides prohibition of traffic in human being and forced labour and any contravention of this provision is an offence punishable in accordance with law. The expression ‘traffic in human being’ has been held to include not only slavery but also traffic in women for immoral purposes. With a view to protect the women, the Suppression of Immoral Traffic in Women and Girls Bill was passed in 1956 which has been amended and renamed as Immoral Traffic (Prevention) Act 1986. The children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes.

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. While keeping in mind the constitutional requirements the Legislature has enacted from time to time a number of statutory provisions, protecting interests of children of tender age working as child labour. Child labour problem is the most glaring example of exploitation of children at the hands of employer.

In another case, the Supreme Court held that, though the Employment of Children Act, 1938 did not include the construction work on projects because the

21 Ibid Art. 23
22 Gaurav Jain v Union of India, AIR 1997, SC 3021
23 Ibid Art. 24.
construction industry was not a process specified in the Schedule to the Act, yet, such construction was a hazardous occupation and under Art.24, children under 14 years of age could not be employed in a hazardous occupation. The right of a child against exploitation under Art.24 was enforceable even in the absence of implementing legislation, and in a public interest proceeding²⁴. Children should not be employed in hazardous factories for manufacture of match boxes and fireworks, and positive steps should be taken for the welfare of such children as well as for improving the quality of their life²⁵.

Sexual exploitation and sexual abuse of Children has become a major problem, means and majors are being searched to curb this social evil. The Supreme Court of India in *Sakshi vs. Union of India*²⁶ has also expressed its anxiety and has requested the Law Commission Of India to express its view on the topic in light of Sections 375 & 376 of the Indian Penal Code.²⁷ An exploiter or an abuser not only violates the privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process of rape, a part of sexual exploitation, which is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, but a rapist degrades the very soul of the helpless victim.

**In Gaurav Jain v Union of India**²⁸: The Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached on them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry.

The courts, shoulder a great responsibility while trying an accused on charges of rape and deal with such cases with utmost sensitivity” holds the Supreme Court in

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²⁴ People’s Union for Democratic Rights v. Union of India, AIR 1982, SC 1473.
²⁶ (1999) 6 SCC 591
²⁸ (1997) 8 SCC 114
T. K. Gopal Alias Gopi, V. State Of Karnataka\textsuperscript{29} The Supreme Court in State of Karnataka, v. Krishnappa\textsuperscript{30} has expressed anguish on the Karnataka High Court "s" lacking sensitivity" towards a child rape victim and increased the sentence of the accused and held that where a child is involved punishment cannot depend on the social status of the victim or of the accused, the reduction of sentence should not be in a mechanical manner without proper application of mind, on the ground long lapse of time and the prosecutrix might have got married and settled in life.

State of Andhra Pradesh Vs. Palamala Raju\textsuperscript{31} The media has played a great role in bringing into light the sexual abuse and exploitation of children, the events are such that it is beyond ones" imagination and belief and has helped the society in raising voice against such crime and the government and police machinery in booking the criminals and in controlling the crime. The Supreme Court in State Of Maharashtra Vs. R.J. Gandhi\textsuperscript{32} has warned the media that the crime against the children should not be glorified by their reporting. Studies show that persons, who are holding trust and power vis-à-vis, have sexually exploited and abused the child and the abuse is done in different forms:

In cases of child labour and domestic workers by the employer and other adults as sexual gratification. Further the migrants, refugees; displaced children are the worst sufferers, as there is no record regarding them. In some institutions, those who are supposed to provide care and protection, sexually abuse children. It is unfortunate that the increasing number of sexually transmitted diseases has increased the demand of child prostitutes and the children have become the victim of international flesh trade, specially at tourist centers. In India, cultural and traditional factors leading to child marriage have led to the sexual abuse of the child, primarily the tender aged girl child.

Various investigations and studies have proved that the exploitation, which a child is facing, is in every walk of life and the worst sufferer is the girl child. Today, the world's opinion is to give equal right to both, male and female child respective of their sex, so as the juvenile is brought out from the cover of neglect and

\textsuperscript{29} (2000) 6 SCC 168
\textsuperscript{30} (2000) 4 SCC 75
\textsuperscript{31} (2000) 7 SCC 75
\textsuperscript{32} (1997) 8 SCC 386
injustice. The exploitation, which a child has to face in every walk of life, has compelled the members of the United Nations to come out with the Convention on the Right of The Child. The main motto behind it is not only to give the children there right but also to protect them from abuse and exploitation in any form.

In the Indian context, laws have been framed and the existing laws have been made more effective. The Supreme Court in Vishka vs. State of Rajasthan\(^33\) holds that the International Conventions and norms, consistent with the spirit of fundamental rights, can be read into those rights for interpreting them in the larger context to promote the objects of the Constitution of India. A three-Judge bench of the Supreme Court in Umesh Chandra\(^34\) after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act.

The following are the most important International Conventions regarding trafficking of children:

- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- Declaration on Social and legal principles relating to the Protection and Welfare of Children, with special reference to Foster placement and adoption nationally and Internationally, 3 December, 1986.

\(^{33}\) AIR 1997 S.C.3011  
\(^{34}\) AIR 1982 SC 1057
Juvenile Justice Act, 2000 with its amendment in 2006, in its present form has been enacted in discharge of the obligation of our country to follow the United National Standard. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no manner of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof. The Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act.

Pratap Singh v. State of Jharkhand

Also the Supreme Court embarked on the process of identifying, releasing and rehabilitating bonded labourers, ensuring minimum-wage payments and availability of wholesome drinking water and setting up dust sucking machines in the stone quarries. These orders of the Court were monitored through a monitoring agency, which would check the implementation of those directions. These interpretations by the Supreme Court were powerful steps towards the realization of a social order based on equity.

3.3 Directive principles of state policy:

A more direct activist role of the state in bringing forth socio-economic transformation was assigned by the Constitution of India through Directive Principles of State Policy. These principles are not directly enforceable by the law courts. But the courts, while interpreting the Constitution, including the Fundamental Rights, are to be guided by them. The Constitution enjoins the state to regard them as fundamental in governance and to apply them when making laws.

For Children and the Weaker Sections:

The state is directed to provide, within a period of ten years from the proclamation of the Constitution to all children up to the age of fourteen years Article 45. The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and

35 AIR 2005 SC 2731
the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation Article 46.

This unit has given focus on the developmental aspirations of the national movement that were embodied in the Constitution of India, the highest legal, political charter of the Indian polity. The Indian Constitution enshrined in itself the positive aspects based on experiences of the people around the world. In fact, the Preamble remains the soul of the Constitution, with the utmost aim of safeguarding the rights of the people and ensure justice in all aspects. There is also a provision for Directive Principles of State Policy regarded as fundamental in the matters of governance. It also ensures to safeguard the rights of the workers, children, weaker sections and nurture, develop and protect agriculture, environment, forests and wildlife of the country. The rights of children are protected by the fundamental rights and freedoms and also have been covered under the Directive Principles of State Policy.

State shall, that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength\textsuperscript{37} and direct its policies towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment\textsuperscript{38}. The State must endeavor to provide, within the period of 10 years from the commencement of the constitution, free and compulsory education for all the children until they complete the age of 14 years. It was held to be not justifiable, being only directive in nature. The Article Art.45 does not confer legally enforceable right upon primary schools to receive grants-in-aid from the government\textsuperscript{39}.

3.4 Fundamental duties:

This fundamental duty has been inserted by the NDA government by 86th Amendment Act, 2002 and the wording is “who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age

\textsuperscript{37} Ibid Art. 39 (e)
\textsuperscript{38} Ibid Art. 39 (f)
\textsuperscript{39} Joseph Valamangalam, Rev. Fr v. State of Kerala, AIR 1958 Ker. 290
of six and fourteen years." I value this duty as the most important of all duties.

However, the Fundamental Duties cannot be enforced by writs. They can be promoted only by constitutional methods. But they can be used for interpreting ambiguous statues i.e. where the constitutionality of an Act is challenged the court may look at Article 51-A to uphold it. So far the Courts have referred to Duties mainly in cases relating to environment as was done by the Supreme Court to stop quarrying at certain places in UP which also had its impact on arrival hills. The Court has also, in some cases, issued directions regarding declaring disputed areas as reserved forests.

It shall be the duty of every citizen of India who is a parent or a guardian to provide opportunities for education to his child or as the case may be ward, between the ages of 6 and 14. Although Part IV of the constitution refers to fundamental duties, it makes special reference to proper education and socialization of youth. The National Charter of 2004 of the Government of India emphasizes the government’s commitment to children’s rights to survival, development and protection. 40

Common Good and Life of Dignity

Under the Constitution of India it directs the state to regard of raising of the level of nutrition and the standard of living of its people and the improvement of public heath as among is its primary duties. The state is required to take step to bring about prohibition of consumption, except for medical purposes, of intoxicating drinks and drugs 41. The right to health also has its reference in Articles 38 social order to promote the welfare of the people, 39(e) health of workers, men, women and children must be protected against abuse, 41 right to public assistance in certain cases, including sickness and disability and 48A the State’s duty to protect the environment of the directive principles. The right to health has also been articulated as an integral part of the right to life. In one case the Supreme Court dealt with the health hazards faced by workers engaged in the asbestos industry. Reading concurrently Article 21 with Articles 39(e), 41 and 43, the Supreme Court held that “the right to health. Is an integral facet of a meaningful right to life”

40 Art. 52A (k) of the Indian Constitution.
41 Ibid Art.47.
The State shall make provision for securing just and humane conditions of work and of maternity relief. The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial, agricultural or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.42 Factors Leading to Trafficking “Poverty is not the only cause” Combating of Trafficking Prevention of human trafficking requires several types of interventions. Prevention as a strategy to combat trafficking has to focus on areas of sensitization and awareness among the public, especially those vulnerable

The Constitution of India envisages for Indian children a happy and healthy childhood, free of abuse and exploitation. However, the reality of daily life for vast numbers of children is completely disconnected from this vision. In the case of juveniles facing the law enforcement machinery, the situation is even more poignant. The problem of neglected and delinquent children can only be understood and dealt with in the context of the wider concept of child rights. The objectives of the Juvenile Justice (Care and Protection of Children) Act, 2000 are to ensure the care and protection of children, to provide for their development and rehabilitation, and most significantly, to reorient the law regarding juveniles according to the standards and rules prescribed by the United Nations. Large numbers of children in India live in conditions of deprivation and in circumstances which can easily lead them to crime.

42 Ibid. Article 43