CHAPTER-III

RIGHTS OF CHILDREN IN INDIA: CONSTITUTIONAL AND STATUTORY PROTECTION
The commitment of India regarding children is as old as its civilization. No doubt, child is considered to be a gift of the God that must be protected with care and affection, within the family and the Society. The British history shows that the concern of child welfare has undergone a significant change. In earlier times the concept of authority and control was there in the society regarding child welfare. During that time father exercised absolute rights over his children. However, it is seen that the concept of welfare principle regarding children varies in different traditions. The welfare principle according to the Indian traditional view is based on “Daya, Dana, Dakshina, Bhiksha, Ahimsa, Samya-Bhava, Swadharma and Tyaga,” whose characteristics were self-discipline, self-sacrifice and consideration for others. It is thought that the welfare of children depended on these values. But the concept of children’s rights emerged only during the twentieth century. It was just a shift from the ‘welfare’ to the ‘rights’ approach.

What are rights? Right is what someone does for you. Right is also about what others must not do for you. Rights are entitlements (a just claim or right). Rights also imply obligations and goals. The concept of “Rights” is almost concerned with issues of social justice, non-discrimination, equity and empowerment.

India has the largest child population in the world, i.e. 400 million children below the age of 18 years. Such a huge child population compelled India to provide care and protection to them. So, it was essential to set-up institutions both in the governmental and voluntary sectors, to provide care.

---

5 India’s Second Report on CRC, 2001. (CRC/C/93/Add. 5) p. 4.
to the young. 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. After independence India continuously worked for the welfare and child development. The efforts which have been done for the upliftment of children for the past 59 years are a testimony to India's commitment towards children.

How the children are empowered in India? Children are empowered in India through various provisions contained in the constitution and through various legislations passed by the government. The constitution and statutory laws play an important role in empowering and protecting children. In India legislations have always been the main weapons of empowerment of children. But the appropriate legislation doesn't mean that it will achieve the goals of the legislation. But this is fact that, it creates such an environment in which state is compelled to take action to promote the growth and development of children in an effective manner.

The constitution of India came into effect on 26 January 1950. The constitution is just an umbrella which provides comprehensive understanding of child rights. It has special provisions for the fullest development of children's rights, which ensured that the protection of children is enshrined in the highest law of the land. By ratifying the Convention on the Rights of the Child, the Indian government has shown its commitment to the protection of rights of children. The government of India is taking action towards children according to the Convention on the Rights

---

6 First Report on CRC, n.1, p. 4.
7 Ibid.
8 Bajpai, n. 2, p. 6.
of the Child. Simultaneously, the government is trying to review the national and state legislations in the light of the provisions of the Convention.°

**Constitutional Protection of Child Rights in India**

The constitution is considered as the guardian of each and every citizen of India including children. Children have been given special emphasis in the constitution because they constitute the vulnerable group of the society. The constitution is very much concerned about the children just because they are the future of the country. But the question that arises is who is a child? The census of India defines persons below the age of 14 as children. The Social Scientists, according to standard demographic data places girl child in the age group of 15 to 19 years. But almost all the government programmes kept persons below the age of 14 years as children. However, there is no specific age prescribed in India, to be called a child because it varies in different laws.°

Children are supposed to enjoy rights because they are rights holders. It is the duty of the state and its government and also adults to realize the rights of children. However, all children have equal rights but some children need special attention in certain situation. The category, number and characteristics of rights can be traced only in the constitution of India. There are certain rules and regulations that the government has to undertake to protect people from unjust action by its agencies.°° What are the provisions in the constitution for children? The provisions regarding child rights have been increasing in the constitution since its enactment. Therefore, the Indian citizens enjoy more fundamental rights today. The adequate provisions for the protection, development and welfare of children are included in Part III.

---


°° Bajpai, n.2, p. 2.

°°° HAQ, n.3, Retrieved 10-04-2010.
i.e. Fundamental Rights, part IV, i.e. Directive Principles of State Policy and part IV-A, i.e. Fundamental Duties. The basic human rights which are enforceable by the courts are fundamental rights of all, including children. On the other hand, Directive Principles of State Policy (DPSP) is not enforceable by the courts. DPSP based on the fundamental guidelines which the state is expected to apply in framing and passing laws. The main aim of DPSP is the welfare of the people particularly children. Besides fundamental rights and DPSP, there are some moral obligations/duties of citizens which aim to promote patriotism and unity of India under fundamental duties. Fundamental duties are also not enforceable by the courts.

The constitution has listed fundamental rights which are basic to every human being including children. Right to equality refers to equality before law for all, including children in article 14. Article 15 talks about right against discrimination and article 15 (3) deals that the state must make special provisions for women and children. Article 17 deals with the right to be protected from untouchability. Right to freedom means freedom of speech and expression such as to assemble peacefully and without arms, to form associations and unions, to move freely throughout the territory of India and to practice any profession, occupation or carry on trade and business which are dealt in article 19. Article 21 talks about the right to life with dignity and personal liberty. Right to free and compulsory elementary education to all children of the age of 6 to 14 years which is dealt in article 21A is inserted after 86th amendment in the year 2002. Article 22 talks about the protection against arrest and detention. Article 23 and 24 related to right against exploitation. It protects children from being trafficked, from being employed in factories and also from being forced into bonded labour. Article 25 gives freedom to all citizens including children to conscience, profess.

12 Bajpai, n.2, pp.6-7.
14 Ibid.
practice and propagation of religion. Article 26 gives freedom to manage religious affairs and article 27 is related to payment of taxes for promotion of any particular religion. Article 28 gives freedom of religious instruction which is also relevant to education of children. Children have the cultural and educational rights in article 29 and 30. Article 29 gives right to conserve one's language, script and culture and right to admission to any educational institution without discrimination on the basis of caste, colour, sex, etc. Article 350A gives facilities for instruction in mother-tongue at primary stage. Simultaneously Article 30 provides right to establish and administer educational institutions. In the case of violation of one's fundamental rights, one can directly move to the Supreme Court for enforcement of rights. The constitution provides this right under article 32 to all citizens including children.

Part IV of the constitution contains the Directive Principles of State Policy. These Directives, though non-justiciable, constitute the fundamental principles of governance. The Articles for the welfare of the children under DPSP are 39A, 39 (e), 39 (f), 45, 46 and 47. Article 39 (A) ensures that the state's legal system must promote justice, on a basis of equal opportunity, provide free legal aid through suitable legislation or schemes. Article 39 (e) provides that tender age of children are not abused and forced by economic necessity to go for occupations which is unsuited to the age and strength of children. Article 39 (f) states that children must be provided opportunities and facilities so that they could develop in a healthy manner with freedom and dignity along with the protection of childhood and youth against exploitation.

---

17 Ibid.
Article 45 of the DPSP has been revised in 2002 according to which. 
"The State shall endeavour to provide early childhood care and education 
for all children until they complete the age of six years." Article 46 directs 
the protection of children from social injustice and all forms of exploitation. 
Article 47 gives further support like right to nutrition and standard of 
living. 

Fundamental duties talk about the duty of parent or guardian to 
provide opportunities for education to their child between the ages of 6 to 14 
years. This is referred to in Article 51A. 

Statutory Protection of Child Rights in India 

Besides the constitutional protection of children, there are statutory 
laws which also give protection to children. There are more than 250 central 
and state statutes which provide protection to children in India. Some of 
the important legislations are as follows: 

Indian Penal Code 1860 

The sections of the Indian Penal Code (IPC) protect children to a very 
great extent. Any act done by a child under the age of seven years will not 
be considered as an offence. The criminal act done by a child will be 
considered as an offence only if the age of children is 12 years or more than 
that. As far as the sexual consent of girl is concerned, the girl must have 
at attained the age of 16 years. But in case of married girls, the age of sexual 
consent should not be less than 15 years. However, there is not a specific 
law or policy to deal with sexual abuse. The Indian penal code comes under

---

18 Bakshi, n.15, p. 90.  
20 Ibid.  
21 Bajpai, n.2, P. 7.  
22 Section 82 IPC.  
23 Section 83 IPC.
criminal laws, still gives protection to children. The IPC deals with the sexual abuse of children as rape. IPC defines rape.\textsuperscript{24} Simultaneously, the IPC provides punishment for the crime of rape which is not less than seven years imprisonment and not more than ten years. But in another case where man raped his own wife who is not under 12 years of age, the person will be punished with imprisonment for a term of two years or with fine or may be with both the fine and imprisonment.\textsuperscript{25}

The Indian Penal Code also contains the provisions in its section which deals with the problem of export and import of girls for the purpose of prostitution.\textsuperscript{26} There are other criminal laws too, besides IPC 1860, which gives and talks for the protection of children. For example, the Evidence Act, 1872, the Code of Criminal Procedure, 1973. All these laws define the nature and categories of offences including the punishment for such offences.\textsuperscript{27}

**The Guardians and Wards Act 1890**

This Act is one of the earliest statutes enacted by the British Indian Legislature. This Act provided protection to minor children, so that special jurisdiction conferred on the High Courts by the charters of the High Courts and the High Court Act of 1861.\textsuperscript{28} This Act brought all the scattered statutes and regulations into a consolidating and amending statute. The guardians and wards of minor children was a matter of great concern. This Act is a complete code, which defines the rights and remedies of guardians and wards. This is applicable to all children, i.e., minor children without any discrimination on the basis of caste, colour, creed, etc. Once a certified

\textsuperscript{24} Section 375 IPC.

\textsuperscript{25} Section 376 IPC.

\textsuperscript{26} Section 366 (A) and 366 (B) of IPC.

\textsuperscript{27} Bajpai, n.2, p. 9.

\textsuperscript{28} Ibid., p. 94.
guardian of minor is appointed, there will have no power of natural guardian under the personal law.  

Child Marriage Restraint Act 1929

The issue of child marriages is dealt by the Child Marriage Restraint Act, 1929 and by other personal laws. The Child Marriage Restraint Act is also known as Sharda Act enacted by the British government. This Act applied on all Indians whether Hindus, Muslims or Christians. It was 15 years for girls and 18 years for boys as prescribed minimum age for marriage under the Act. This Act did not prove to be very strong because the punishment under the Act was mild and so that it couldn't give the desired results. The Child Marriage Restraint Act failed to root out the evils of child marriages from the society. Then the Child Marriage Restraint (Amendment) Act, 1978, was passed which rose the minimum age of both girls and boys. So, the minimum age for girls for marriage became 18 years and 21 years for boys. This Act draws the attention towards one of the vital problems of the society through which rights of children get violated.

The Hindu Minority and Guardianship Act 1956

According to the Hindu Minority and Guardianship Act, 1956, father is the natural guardian of legitimate children and his/her property and after him mother will be the natural guardian. The Supreme Court has also made the mother the natural guardian of legitimate child. According to 1956 Act, the natural guardian of illegitimate children is mother and after her death, the natural guardian will be the putative father. In the case of adoption, the natural guardian of adopted child will be the adoptive father and after him, the custody of child will be given to the adoptive mother who will be the

29 A.R Krishnan Chetty v Valliaachani, AIR 1914 Mod 648.
30 Bajpai, n.2, pp.220-221.
31 Githa Hariharan v Reserve Bank of India, 99 (2), Sec. 228.
natural guardian of the child. This Act has given both the parents, the power of appointing testamentary guardians.\textsuperscript{32}

**Apprentices Act 1961**

It is used to happen that the children were engaged in learning trade for a specified period of time on low wages. The age of children was less than 14 years or less than that. The Apprentice Act 1961 came and prescribed that the children will be engaged as an apprentice only, if they are up to 14 years age or more than that. It also prescribed standards of education and physical fitness for children.\textsuperscript{33}

**Laws Regulating Child Labour**

Child labour is one of the vital problems existing in the Indian society for several decades. Though there are a number of laws both constitutional and statutory to regulate child labour in India; still the country is having the highest number of child labour in the world. Thus, legislations have been continuously adopted for several decades to control and regulate the problem of child labour in India.\textsuperscript{34}

Following are some of the legislations regarding child labour in India: the Factories Act 1881 revised in 1891; the Mines Act 1901; the Factories Act 1911; the Factory (Amendment) Act 1922; the Indian Mines Act 1923; the Factories (Amendment) Act 1926; the Indian Ports (Amendment) Act 1931; the ‘Tea Districts’ (Emigration Labour) Act 1932; Children (Amendment) Act 1934; the Mines (Amendment) Act 1935; the employment of children Act 1938; the Factories Act 1948; Employment of Children (Amendment) Act 1951; the Plantations Labour Act 1951; the

\textsuperscript{32} Bajpai, n.2, p. 98.

\textsuperscript{33} Ibid., p. 8.

Mines Act 1952; the Factories (Amendment) Act 1954; the Merchant Shipping Act 1958; the Motor Transport workers Act 1961; the Apprentices Act 1961; the Beedi and Cigar workers (Conditions of Employment) Act 1966 and the Employment of Children (Amendment) Act, 1978. These are the legislations which tried to control child labour in India along with considering child age, hygiene, working hours and so on.\(^\text{35}\)

**Bonded Labour System (Abolition) Act 1976**

There are also statutory laws concerning bonded child labour. The aim of Bonded Labour System (Abolition) Act is to abolish all debt agreements and obligations. This Act fulfills the Indian constitution’s mandate against beggar and forced labour. This Act gave freedom to all bonded labourers, cancelled the debt against them and even prohibited the creation of new bondage agreements.\(^\text{36}\) In case of violation of this Act, the violators will get imprisoned for three years with rupees 2000 in fine.\(^\text{30a}\)

**The Child Labour (Prohibition and Regulation) Act 1986**

The Child Labour (Prohibition and Regulation) Act 1986 came into force on December 23, 1986. The aim of this Act is to ban the employment of children below the age of 14 years in factories, mines and hazardous employment conditions. This Act also regulates the working conditions of children in other employment. Employers, who will not follow the guidelines of this Act, will be punished under the Act. The punishment is always fines which could be paid to the government of India. The legislative history regarding child labour since 1881 is progressively increasing the legal protection to the working children. The provisions regarding child


\(^\text{30a}\) See The Bonded Labour System (Abolition) Act 1976, Secs.4, 5, 6 and 14.
labour under various enactments considered certain aspects such as working hours, age and the employment in occupations which is harmful to the health and welfare of tender age children.  

**The Juvenile Justice Act 1986**

Who is a Juvenile? A Juvenile is a child who has given special treatment for any offence. Thus, the age is fixed to define juvenile child. An Act was enacted called Juvenile Justice Act 1986 which says that, “a juvenile is a child who has not completed the age of 16 years in the case of boys or the age of 18 years in the case of girls.” [JJ Act 1986 Section 2 (b)]. But the Juvenile Justice (Care and Protection of Children) Act 2000 has brought changes in the age limit of juvenile child. Under this Act, a juvenile is a child who has not attained the age of 18 years for both boy and girl child [JJ (Care and Protection of Children) Act 2000 Section 2(k)]. For many years the process of social development not only brought changes in the family structure but also in social problems like juvenile delinquency. The well planned juvenile justice system consists of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and aftercare organizations. The Juvenile Justice Act 1986 came into effect in 1987 with an aim to provide equal justice to juveniles throughout the country. The Act confirms that no child under any circumstances will be kept in jail or police lockup. It provides care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles. The JJ Act 1986 is replaced by the JJ (Care and Protection of Children) bill, 2000. It considers CRC and other relevant international treaties. This law provides proper development, care, protection, treatment and rehabilitation.

---

37 Bajpai, n.2, p.163.
38 First Report on CRC, n.1, p.15.
39 Bajpai, n.2, p.3.
40 First Report on CRC, n.1, p.61.
of children in need of care and protection. The children under JJ (Care and Protection of Children) Bill, 2000, will be produced before the child welfare committee not under the juvenile welfare boards. It means that there is the change only in the nomenclatures. However, the functioning of both the juvenile welfare boards and the child welfare committees is almost the same. Whatever the change is there in the Act or Bill, but at any cost the welfare of children will not be challenged. The question of ‘juveniles’ protection will also be under consideration.

The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992

The first and foremost need of any child after birth is the nutrition which is very essential for the proper growth and development. The regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods is carried on through this Act. The main aim of this Act is the promotion and protection of breast feeding. All the incidental matters and the proper use of infant feeds are dealt through this Act.

The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994

Before birth, it is very important to detect the genetic or metabolic disorder or chromosomal abnormalities or certain congenital malformations or sex-linked disorders. This is possible through pre-natal diagnostic technique. Thus, the Act for the regulation and prevention of misuse of Pre-
natal diagnostic technique has been enacted in 1992. This Act prevents also the pre-natal sex determination which may lead to female foeticide.\textsuperscript{44}

**National Commission for Protection of Child Rights**

The NCPCR was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005. After ratification of the Convention on the Rights of the Child (CRC) by India, the establishment of NCPCR has proved to be one of the necessary steps to protect the rights of children in the country. The NCPCR is a statutory body at the national and state level. This statutory body has the power to summon and enforce the attendance of any person from any part of India regarding children. The NCPCR is a body having all the powers of the civil court while inquiring into the matter of children. The mandate of the Commission ensures that all laws, policies, programmes and administrative mechanisms are according to the child rights perspective as enshrined in the constitution of India and also enshrined in the UN Convention on the Rights of the Child. The Principle in which the NCPCR emphasizes is the universality and inviolability of child rights. The protection of all children in the 0-18 years age group is of equal importance under the Commission.\textsuperscript{45}

**Summary Observations**

Children are the gifts of the Gods, and they are the future of the country. So, it is the duty of the state to protect children as well as their rights. It can’t be denied that children have been kept under consideration in India since ancient times. It can be said that India is committed to protect all its children. India has taken a number of initiatives to protect the children which could be proved through the constitutional as well as statutory

\textsuperscript{44} Ibid., p. 8.
protection. This is true that India has the largest child population in the world that is why; India has the great responsibility to protect children.

Constitution is the guardian of all including children. It contains provisions for the promotion and protection of children in the Fundamental Rights, Directive Principles of State Policy (DPSP) and in the Fundamental Duties also. The articles which talk for the protection, development and welfare of children are 14, 15, 15 (3), 17, 19, 21 (A), 22, 23, 24, 25, 26, 27, 28, 29, 30, 32 etc. However, articles 21 (A), 23, 24 are very important. Article 21 (A) talks about the education of children, article 23 talks for the protection of children from being trafficked and from forced labour. Article 24 prohibits the employment of children in factories etc. We all know that child labour is a vital problem in India which leads to the violation of the rights of children. DPSP protects the rights of children through the articles 39 (e), 39 (f), 45, 46 and 47. Under fundamental duties article 51 (A) confers duty on the parent or guardian to provide opportunities for education to their child.

There are also some statutory laws for the protection of children in India. Statutory laws have always been very effective to provide protection to children. Time to time Parliament has made legislations to protect the rights of children. The important ones are Indian penal code (IPC) 1860, the Guardian and wards Act 1890, Child Marriage Restraint Act 1929, the child labour (Prohibition and Regulation) Act 1986, the Juvenile Justice Act 1986 replaced by the Juvenile Justice (Care and Protection of Children) Bill, 2000, the establishment of the National Commission for Protection of Child Rights (NCPCR) which is considered to be one of the important steps taken by the government of India for the protection of child as well as their rights. There are more than 250 central and state statutes which cover children in India.
Thus, the laws made by the government of India or any other initiatives taken for the protection of children, proves that children are one of the important groups of the society. So, they must be protected at any cost. This is another thing that most of the children are not exercising their rights. But the efforts are continuously going on through the government as well as through NGOs.