CHAPTER -II
CONCEPT OF CHILD: AN ANALYSIS

"No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime. Young people must be included from birth. A society that cuts off from its youth severs its lifeline".

- Kofi Annan

2.1 Introduction

The significance and importance of the child lies in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be a universe without humanity. Children are the greatest gift to the humanity and they are the representation for the beautiful creation of God. They must be nurtured with care and affection within the family and the society, and they constitute the nation’s human resources.

Children are like a seed, a seed in which a grand tree is hidden so in children abundant strength, intellectual sense, potential power is hidden. A child of today develops to be a responsible and productive member of tomorrow’s society unless an environment which is conducive to his social and physical health is assured to him. Justice K.Ramaswamy, observed "Children of the world are innocent, vulnerable and dependant. They are all curious, active and full of hope. Their life should be full of joy and peace, playing, learning and growing. Their future should be shaped in harmony and co-operation. Their childhood should mature, as they broaden their perspectives and gain new experience. Abandoning the children, excluding good
foundation of life for them, is a crime against humanity. Noble Prize Winner and great Poetess, Gabriela Mistral of Chile chastised the leaders of the society: “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 wait. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer ‘Tomorrow’. His name is today”.

Maria Montessori has made a marvelous observation that, “Humanity shows itself in all its intellectual splendor 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 life”.

“Child is an ‘organic cell’ of the society”. Great Poet John Milton very aptly and admirably said, “Child shows the man as morning shows the day”. The physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages. “The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breadth, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the

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3 Ibid.
nation". Supreme Court said "Today's children will be leaders of tomorrow who will hold country's banner high and maintain the prestige of the nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Govt. of the day. 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 the society when they grow up". Children are the future custodians and torch bearers of the society; they are the messengers of our knowledge, cultural heritage, ideologies and philosophies. Children are really future components in the form of Great teachers, scientists, judges, rulers, doctors, planners, engineers, politicians on whom the entire society founded (rests). Thus, children are important asset not only for their country but also for the whole mankind. So children are supremely important 'National Asset' which was endorsed and approved in the leading case Sheela Barse v. Union of India. Children have the Right to joyful childhood. Every child has the Right to grow up in a safe and nurturing environment with protection and guidance from their guardians/parents. Our Constitution mandates the State, under Article 39, to ensure that "Children are not abused and that childhood and youth are protected against exploitation and against moral and material abandonment".

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5 Sheela Barse v. Secretary, Children Aid Society, AIR 1987, SC 656,659.
6 AIR 1986 SC 1873, see also The National Policy for Children.
2.2 The Legal Definition of a Child

All social backgrounds and culture of the society equally contribute the view that the younger children are more vulnerable and exploitable, both physically and psychologically. Age limits are a form and reflection of society's judgments of the evolution of children's capacities and responsibilities. Almost everywhere age limits formally regulate children's activities: When to join and leave the school; when they can marry; when they can vote; when they can be treated as-adults by the criminal justice system; when they can join the armed forces and when they can work but age limits differ from activity to activity and from country to country. While making use of standard demographic data, social scientists include females, in the age group of 15-19 years under the category of the girl child. Most of the government programs on children are targeted for the age group below 14 years. The legal concept of child varies depending upon the purpose: Whether it is for imposing legal disabilities, (in the political rights sphere), for spelling out duties and obligations (eg. In the Juvenile Justice System), for affording protection (eg. from exploitative or hazardous employment), or for establishing eligibility to receive benefits or special services. (eg. health, education and maintenance benefits). The primary definition of child is the immediate progeny of human parents. The ordinary meaning of “Child” or Children refers to parentage and embraces only the first generation of the offspring. The

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Ibid.
Primary meaning of the word “Child” is an infant and that the text allowable use in meaning is one of tender years, young persons and a youth. Black’s Law Dictionary defines the term “Child” as Progeny: Offspring of parentage. Commonly it implies one who had not attained the age of fourteen years, though the meaning now varies in different “statutes”. The Shorter Oxford Dictionary defines ‘person’ in two ways: ‘an individual human being or a man, woman or child’. The Webster’s New World Dictionary defines a child as inter alia ‘an unborn offspring’. The American Bar Association’s Standards Relations to Rights to Minors proposes that, “all persons who have attained the age of eighteen years should be regarded as adults for all legal purposes”.

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. Relationship of child is with the parents, relatives, community and nation. Capacity is a term of status, competency find variations in view of age, maturity, understanding causing temporary disabilities etc…these makes viewing children as a ‘burden’ which invokes rights to maintenance and support. Further, it leads to temporary disabilities to the children which demands special treatment and special discrimination. Children are most vulnerable and exploitable which requires protection of their rights. Thus recognising children as resources for the country’s development necessitating their

12 Ibid, pp.24-25.
nurturing and advancement. As per accepted definition 'child' means someone who needs adult protection for physical, psychological and intellectual development until able to become independently integrated into the adult world.

2.2.1 Age of the Child

The Constitution of India under Art.24 defines ‘child’ as any one below the age of 14 years and who shall not be employed to work in any factory or mine or engaged in any other hazardous employment. Article 21-A of the Constitution states that, the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law determine. Article 45 of the Constitution states that, the state shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 51-A clause (K) of Constitution lays down a duty that the parents or guardians should provide opportunities for education to his child/ ward between the age of six to fourteen years. According to Art, 1 of the United Nations Convention on the Rights of the Child 1989, A child means every human being below the age of 18 years

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14 Rajvir S.Dhaka and Jagbir Narwal “Child Labour in the City of Rothak: A Study”, Nagarlok Vol. XXXVII, No.1, Jan-Mar, 2005, p.39
15 Article 21-A inserted by the Constitution (Eighty Sixth Amendment) Act, 2002, Sec.2.
16 Substituted by the Constitution (Eighty Sixth Amendment) Act, 2002, Sec.3, for “Article 45 provisions for Free and Compulsory Education –The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years”.
17 Inserted by the Constitution ( Eighty Sixth Amendment ) Act, 2002, Sec.4
unless, under the law applicable to the child, majority is attained earlier."\(^{18}\) The Article thus grants the discretion to individual countries to determine by law whether childhood should cease at 12, 14, 16 or whatever age they find appropriate. In India, the age at which a person ceases to be a child varies in different laws. The Census of India, 2001 treats persons below the age of 14 years as children.\(^{19}\) The Indian Penal Code defines that it is not an offence by a child under 7 years of age and further not an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct, on that occasion.\(^{20}\) The Juvenile Justice Act, 1986 defines Juvenile as a boy who has not attained the age of 16 years, and a girl who has not attained the age of 18 years.\(^{21}\) The Juvenile Justice (Care and Protection of Children) Act 2000, defines Juvenile or child as a person who has not completed eighteenth year of age.\(^{22}\) The Child Marriage Restraint Act, 1929 defines ‘Child’ as a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age and ‘minor’ means a person of either sex who is under eighteen years of age.\(^{23}\) Similarly under The Prohibition of Child Marriage Act, 2006 “Child” means a person who, if a male, has not completed 21 years of age,


\(^{19}\) The Census of India-2001.

\(^{20}\) Ss.82 and 83 of Indian Penal Code.

\(^{21}\) Sec. 2(h) Juvenile Justice Act, 1986.

\(^{22}\) 2(K) Juvenile Justice (Care and Protection of Children) Act, 2000(56 of 2000) Received the Assent of the President on 30-12-2000, and Published in the Gazette of India, Ext., Pt.II, S.1 dated 30-12-2000.

\(^{23}\) Sec.2(a) and 2(d) of Child Marriage Restraint Act, 1929.Sec.2(a) is substituted by Act No. 2 of 1978 w.e.f. 01-10-1978.
and if a female, has not completed 18 years of age.\textsuperscript{24} Under Child Labour (Prohibition and Regulation) Act, 1986 'Child' means a person who has not completed his 14\textsuperscript{th} year of age.\textsuperscript{25} Factories Act, 1948 defines 'child' as a person who has not completed his fifteenth year of age and no child who has not completed his fourteenth year shall be required or allowed to work in any factory.\textsuperscript{26} Further The Factories Act, 1948 distinguishes between 'child', 'adolescent' and 'adult'. 'Child' is a person who has not completed the age of 15 years; an 'adolescent' is a person who has completed the age of 15 years, but is below the age of 18 years, and an 'adult' is a person who has completed the age of 18 years. The Act defines a young person as one who is either a child or an adolescent. A child below the age of 14 is not allowed to work in a factory. A child above the age of 15 and below the age of 18 cannot be employed to work for more than four and half hours and cannot be employed during the night.\textsuperscript{27} Mines (Amendment) Act, 1952 defines Child means no person below eighteen years of age shall be allowed to work in any mine or any part thereof.\textsuperscript{28}

The Indian Majority Act, 1875 defines the normal age of majority in India is 18 years, but if a guardian is appointed before that age by a court or property is taken

\textsuperscript{24} Sec.2(a) The Prohibition of Child Marriage Act, 2006 (Central Act, No. 6 of 2007) received the assent of the President on Jan.10,2007 and Published in the Gazette of India, Ext., pat II, S.1 dated 10\textsuperscript{th} Jan.2007.

\textsuperscript{25} Sec.2(ii) Child Labour (Prohibition and Regulation)Act, 1986 (Central Act No.61 of 1986) Published in the Gazette of India, extraordinary Part.II. Section 1, dated 23-12-1986, pp.1-9.

\textsuperscript{26} Sec 2(c) and 67 of Factories Act, 1948 (63 of 1948).

\textsuperscript{27} Supra note 11, pp 140-141.

\textsuperscript{28} Sec 2(e) Mines (Amendment) Act, 1952.
under superintendence by a court of wards, the age of majority is 21 years. The Hindu Minority and Guardianship Act (HMGA) 1956, defines a ‘minor’ as a person who has not completed the age of eighteen years. The age of majority for the purposes of appointment of guardians of person and property of minors according to the Mohammedan law is also completion of eighteen years. Christians and Parsis also reach majority at eighteen. Under Apprentices Act, 1961 a person shall not be qualified to be engaged as an apprentice...unless he completes fourteen years of age. In Plantation’s Labour Act, 1951 ‘Child’ means a person who has not completed his fifteenth year. The Merchant Shipping Act, 1958 defines Child as a person who has not completed 14 years of age. The Karnataka Shops and Commercial Establishments Act, 1961 prohibits employment of children who has not completed 14 years of age. The Dangerous Machines (Regulation) Act, 1983 prohibits employment of children who have not completed 14 years of age. Under Orphanages and Charitable Homes (Supervision and Control) Act, 1960 ‘child’ means a boy or girl who has not completed the age of 18 years. The Children Act, 1960

29 Sec 3 the Indian Majority Act, 1875.
30 Sec 4(a) The Hindu Minority and Guardianship Act, 1956.
31 The Dissolution of Muslim Marriage Act, 1939.
32 The Indian Divorce Act, 1860.
33 The Parsis Marriage and Divorce Act, 1936.
34 Sec.3 of The Apprentices Act, 1961.
35 Sec 2(c) Plantations Labour Act, 1951.
36 See, Merchant Shipping Act, 1958.
38 See, Dangerous Machines (Regulation) Act,1983.
39 Sec.2(c) The Orphanage and other Charitable Homes (Supervision and Control) Act, 1960.
defines child as a boy who has not attained age of 18 years.  

The Employment of Children Act, 1938 prohibited Employment of child who has not completed his 14 year in any workshop are process.  

The Motor Vehicle Act, 1939 defines child as a person under the age of 14 years.  

Sec.361 of Indian Penal Code provide different definitions, a boy less than 16 is defined as a child and a girl less than 18 is considered as child.  

According to Immoral Trafficking Act 1956, age for children is 18 or less.  

Under Indian Contract Act, 1872 child is a person below the age of 18 years who has no capacity to enter into contract. In Beedi and Cigar Workers (Conditions of Employment) Act, 1966 ‘Child’ means a person who has not completed 18 years.  

Minimum Wages Act, 1948 defines a child as a person who has not completed his 15 years of his age.  

Under Motor Transport Workers Act, 1961 defines child as a person who has not completed his 15th year.  

The Maternity Benefit Act, 1961 defines child includes a still born child.  

The Protection of Women from Domestic Violence Act, 2005 defines ‘child’ as any person below the age of 18 years and

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40 See, Children Act, 1960.  
41 Sec.3, The Employment of Children Act 1938.  
42 See, Motor Vehicles Act, 1939.  
43 Sec.361, Indian Penal Code.  
44 See, Immoral Trafficking Act, 1956.  
45 Sec.2(b), Beedi and Cigar Workers (Conditions of Employment) Act, 1948.  
46 Sec.2(c) Minimum Wages Act, 1948.  
48 Sec.3 (b), Maternity Benefit Act, 1961.
includes any adopted, step or foster child. The National Plan of Action for Children, 2005 defines the ‘child’ as person up to the age of 18 years and its clear declaration that ‘all rights apply to all age-groups, including before birth.

The Right of Children to Free and Compulsory Education Act, 2009 defines ‘child’ as a male or female child of the age of six to fourteen years.

The Constitution regards a person as child until 14 years. India has now recognized that the period of childhood and the protection it should imply extend to the age of 18 years. The National Plan of Action for Children, 2005 officially acknowledges this higher age ceiling.

To bring uniformity, the Child Labour (Prohibition and Regulation) Act, 1986 amended certain other related enactment already in force. After clause (b) in Sec. 2 of the Minimum Wages Act, 1948 a new clause (bb) has been inserted by Sec. 23 of the present Act, which defines “child” as a person who has not completed his fourteenth year of age and Child Labour Act by Sec.23 has further amended the Minimum Wages Act (Act 11 of 1948) as follows:

For clause (a), the following clauses have been substituted, namely,

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51 Sec. 2(c) The Right of Children for Free and Compulsory Education Act, 2009, (Central Act, No. 35 of 2009) received the Assent of the President on 26th Aug, 2009 came into force w.e.f. 01-04-2010.
52 Towards faster and more inclusive growth, an approach to the Eleventh Five-Year Plan, Planning Commission, Govt. of India, New Delhi, 2006, p.17.
(a) "adolescent" means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) "adult" means a person who has completed his eighteenth year of age.

The Plantations Labour Act (Act of 69 of 1951) has also been amended by Sec. 24 of Child Labour Act, 1986 to bring the age of the child in conformity with the definition under the said Act. Under the amended Sec. 2 [clauses (a) and (c)] child means a person who has not completed his fourteenth year of age for the word fifteenth, the word fourteenth has been substituted. Similarly Sec. 109 of the Merchant Shipping Act, 1958 has been amended by Sec. 25 of Child Labour Act, 1986 and under the amended Act "child" means a person who is under the age of fourteen years. In a like manner Sec. 2(a) and (b) of Motor Transport Workers Act, 1961 has been amended by Sec. 26 of Child Labour Act, 1986 and now child means a person who is under the age of fourteen years.

2.2.2 The "Age of the Child": An Analysis

From the above analysis it is observed that there is no criteria or scientific parameters in defining the age of the child and is not uniformly defined in various laws. The age of the child has been differently defined in different laws. Different Indian Laws have varying versions on when a child turns adult. Some laws say the age of attaining adulthood is fourteen, while in other it ranges between sixteen and eighteen.\(^{53}\) The Child Labour (Prohibition and Regulation) Act, 1986 has an

\(^{53}\) My name is Today-Children in News “Butterflies” Programme with street and working children Vol.XVI, 2009, New Delhi, p.70.
altogether different definition. Only those below a fourteen are considered as children. Children between 14 and 18 are still are now allowed to work in hazardous industries.\textsuperscript{54} The age 14 was fixed may be on the ground of biological aspect. The Child Labour Act does not specify the minimum age of employment of children in the occupation and process other than the prohibited ones. Since this legislation was enacted way back in the year 1986, age of the child under this legislation continued and remains a debatable concept.

Sec. 361 of IPC is confusing as it gives different definitions with regard to age of boy child and girl child. There is no gender parity in IPC for children. Most law enforcers wonder how to deal with girls between 16 and 18 years, caught in prostitution rackets or rescued from trafficking. There is a confusion and difference between the IPC and Immoral Traffic Act. There is an inherent contradiction in the IPC, while sex with a girl who is 16 or younger is considered rape, in the case of married woman the offence can be registered only if she is less than 15. This is contradictory to the provisions of the Prohibition of Child Marriage Act, 2006 which says that the legal age of marriage is 18. Further the age of marriage for boy is 21 years and for girl is 18\textsuperscript{55} years which is differently defined under the present legislation, The Prohibition of Child Marriage Act, 2006. As such the age of the marriage for both boys and girls should be made 18 years, as there is no scientific

\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid.
reason why this should be different and there is no justification for defining the age of the child differently. At the age of 18 girl child do not complete her education and hence this provision deprives the girl child of opportunities to growth and development. Further the legalization of the Prevention of The Immoral Trafficking Act is also under debate, Sec. 7(aa) states, that “child” means a person who has not completed the age of sixteen years. There are no different provisions for women and girl children. So, while the age for voting and marriage is put at 18, this Act defines the age of the girl child at 16! Maximum punishment for procuring a girl child under the age of 16 is 5 years. But under the Prevention of Immoral Trafficking Act, it can go till 7 years and continue till life. Detaining a child under this Act, is a crime. Similarly, if a child is found in a brothel, it is assumed that it is for commercial exploitation. The Indian Penal Code defines the punishment for procuring a minor girl, for illicit intercourse, importing of a foreign girl from other country. Sec. 366-A which states – “procurement of minor girl – girl below the age of 18 years with the intent of illicit intercourse with another person-punishable with imprisonment of 10 years and fine”. Sec.366-B states – “importation of girl from foreign country – outside India – under the age of 21 years with intent of illicit intercourse with another person – punishable with 10 years imprisonment and fine”. The age of a foreign girl is put at

58 Ibid., p.5.
21 years old. The offence is same, but an Indian girl is treated differently. Also, the courts have refused to change the definition of Rape.\textsuperscript{59}

In the Child Marriage Restraint Act, 1929 there is difference between the age of the boy and that of the girl. The minimum age of marriage for girls is 18 but the age of sexual consent under the rape laws is 16 and it is 15 if she is married.\textsuperscript{60} Thus Child Marriage Restraint Act, 1929 itself is a very weak and dilatory. Child Marriages are valid even though there is prescribed minimum age of marriage. The procedure to prevent child marriages are very cumbersome and time consuming. Illiteracy and orthodoxy of the people have proved to be other stumbling blocks.\textsuperscript{61}

There is a disparity of age of the child in child labour laws and Juvenile Justice laws. In the existing Child Labour (Prohibition and Regulation) Act, 1986 those below 14 years of age are considered as child labourers but the Juvenile Justice Act considers 18 as the age bar, may be on the ground of the legal aspect. Further the Right to Education Act, 2009 narrows the definition down to persons between six to fourteen years. Though the Act expresses interest in taking necessary steps in providing free pre-school education for children above 3 years of age, leaving out this critical segment of the child population from the definition is worry some not only

\textsuperscript{59} Ibid.
\textsuperscript{60} Supra note 8, p.5.
\textsuperscript{61} Ibid. p. 30.
does the Act fail to cover all children, does not provide definite timeless for many provisions.62


Thus clarity is missing on the basic understanding of ‘who is a child’.64 The different connotations, versions defining ‘child’ invites gaps in legal procedures, provides scope to the vested interests and guilty to escape from prosecution and punishment. This further consequently causes injustice to the children. The UN Convention on the Rights of the Child mandates, the age of the child should be 18

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63 Supra note 50, p.33.
64 Supra note 62.
years and 'best interest of the child' be adhered in all situations, and the Convention was ratified by Government of India and is signatory. So the definition of the term, 'child' be brought in conformity with Convention on the Rights of the Child viz. “below 18 years of age” by establishing one standard “age of majority”.65

2.3 Definition of Childhood

Child is called the father of man, but it is more proper to call it as father of whole mankind. Child’s innocence and smile assures us of great future. Childhood is the most precious stage of a person’s life. Therefore the guardians of the children including the Government must fulfill the Constitutional obligation of ensuring right to life for them. “Childhood is the foundation of hopes for better future”.66 Childhood was considered to be the golden age in individuals’ life history rather than adulthood. Every child has to enjoy the childhood, as it is the basic and natural right of a child for building the personality of a person, childhood is very remarkable bearing. This demands proper environment and atmosphere and the child is suppose to have the love, care, protection, education and nurturing too. Parents owed responsibility to provide opportunity to the child to grow and develop in a environment which is healthy, safe and from danger/violence free.

65 Dr. Savita Bhakhry, “Children in India and their Rights” NHRC, New Delhi, 2006, p.45.
Undoubtedly childhood is the golden period of physical, mental and moral growth. M. Edwards\(^{67}\) rightly observes: “Children are the future: childhood is a once-and-for-all biological window of opportunity for investment in human beings. Losses incurred can never be made good and a failure to support children as children will have permanent effects on society’s capacity to develop”.

Justice V.R.Krishna Iyer says that: A generation which fails to recognize that the baby is its first charge is lost in barbarity. The hall-mark of culture and advance of civilization consists in the fulfillment of the obligation to the young generation by opening up all opportunities for every child to unfold in its personality and rise to its full stature-physical, moral, mental and spiritual”. He further adds that it is the birth right of every child to get justice from the world as a whole.\(^{68}\)

The Right to childhood is a sacred entitlement of mankind. Children are not just tomorrow’s citizens but today’s as well. Childhood is more than just the time before a person is considered an adult. It means more than just the time between birth and the attainment of adulthood. Childhood refers to the state and condition of a Child’s life: To the quality of those years. Childhood implies a separate and safe space, demarcated from adulthood, in which children can grow, play and develop.\(^{69}\)


\(^{69}\) Supra note 66, p.3.
The Directive Principles of State Policy under Constitution are basic cardinal Principles of justice as they stand for guarantee to safeguard the interest of women and children. The tender age of children are not be abused and not forced by economic necessity to inter avocations unsuited to their age or strength.  

In Sheela Barse v. Union of India, the Supreme Court called upon the state governments to bring into force and to implement vigorously the provisions of the Children’ Acts enacted in various states to implement the directive contained in Article 39(f) of the Constitution that, “the state shall direct its policy towards securing that Children are to be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment by the state.

Though it is a matter for the state government to decide as to when a particular statute should be brought into force, the court felt it appropriate that every state should bring the Act into force without any delay and administered in accordance with provisions contained therein.

State has to provide early childhood care and education for all children until they complete the age of 6 years. Way back in the year 1948, The United Nations

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70 Article 39(e) of the Constitution.
71 AIR 1986 SC 1773.
73 Article 45 of the Constitution.
General Assembly had adopted the Universal Declaration of Human Rights which contains specific references about children and their rights. "Motherhood and Childhood are entitled to special care and assistance", and adds that "all children whether born in or out of wedlock shall enjoy the same special protection".74

Judiciary has laid down various guidelines on the concept of childhood. In *Bandhua Mukti Morcha's case*75 Justice P.N. Bhagwati has held that: "This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity..." The observations made by the Supreme Court in another judgment in *Bandhua Mukti Morcha v. Union of India*,76 are relevant in the context, which read: "The child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment conducive to his social and physical health is assured to him. Every nation, developed or developing, links its future with the status of the child... Neglecting the children

74 Article 25, Universal Declaration of Human Rights, 1948.
means loss to the society as a whole. If children are deprived of their childhood—socially, economically, physically and mentally—the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the need of its best development”. The Supreme Court of India in *Rosy Jacob v. Jacob A. Chakramakkal*,77 observed that: “The children are not mere chattels: nor are they mere play things for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society…”.

2.3.1 Childhood – Growth of Children

Children are innocent, trusting and full of hope, this childhood should be happy and loving their lives should mature gradually, as they gain new experiences. But for many children, the reality of childhood is altogether different. Right through history, children have been abused and exploited. They suffer from hunger and homelessness; work in harmful conditions, high infant mortality, deficient health care and limited opportunities for basic education. A child need not live such a life. Childhood can and must be preserved. Children have the right to survive, develop, be protected and participate in decisions that impact their lives. Children should be carrying books, not

77 (1973) 1 SCC 840 at p.855, para 15.
bricks. They should be playing with footballs not stitching them. They should be sitting inside the classrooms, and not sweeping them.78

Our two great epics Ramayan and Mahabharata also appraised the Indian view of childhood regarding intense parental longing for children, and their upbringing is characterized by affectionate indulgence.79 The ancient rulers King Ashoka, (268-31 B.C.), Chandragupta Vikramaditya (A.D. 375-415) stressed on loyalty and obedience by children to their elders. This was also considered not only a moral but also socially approved and valued behaviour.80

Children rarely figured as individuals in their own rights, with activities, reactions and feelings separate from those of their all powerful parents.81 Rama’s love for Lava and Kusha, Prabharkaravardhan’s love for his son, Harsha and Kanwa’s love for his daughter Shakuntala are well known examples.82 The songs of Surdasa on Krishna’s childhood and that of Tulasidasa on Rama’s childhood, which are rich resources for childhood.83

The 19th century saw the birth of the child-saving movement, the growth of the orphanage, the development of child protection legislations, schooling and the construction of separate institutions, including the Juvenile courts, for delinquent children, in different parts of the western world. One of the reasons for this kind of

78 Campaign Against Child Labour- ILO –IPEC Karnataka Child Labour Project - (Supported by the Govt. of Italy), pp.12,13.
79 Supra note 65, p.12.
82 Ibid.
83 Ibid.
development was that in the wake of industrial revolution there was severe exploitation of many working-class children who were widely employed in textiles, mining, agriculture, domestic service, docks and navigation. Moreover, the so-called 'advances' of industrialization and urbanization had serious consequences.\textsuperscript{84} All the leaders and reformers invested their time, knowledge and resources towards better health, education and growth of the weaker children.\textsuperscript{85}

The ideals of childhood are one of love, care and protection, in a family environment with ample scope to survive growth, develop and participate. Childhood as a time when children are allowed to grow and develop to their full potential; healthy children in school and at play, growing strong and confident with the love and encouragement of their family and an extended community of caring adults gradually taking on the responsibility of adulthood, free from fear, safe from violence, protected from abuse and exploitation. Firstly, childhood is an empty word and broken promise. Secondly, childhood is the foundation of the world's hope for better future.\textsuperscript{86} There is a gap between the reality and ideal childhood. Childhood implies a separate and safe space, demarcated from adulthood, in which children can grow play and develop. A new definition of childhood based on human rights is reflected in the Convention on the Rights of the Child, adopted by the UN's General Assembly in 1989. The Convention is the First International Human Rights treaty to bring together the Universal set of standards concerning children in a unique instrument and the first to

\textsuperscript{84} Ibid, p.16.
\textsuperscript{85} Ibid.
\textsuperscript{86} Supra note, 66 p.1.
understand child rights as a legally binding imperative. The Convention on the Rights of the Child defines childhood is separate space demarcated from adulthood. Historically, the needs and obligations of children were not well differentiated from those of adults. Like adults, able-bodied children traditionally engaged in arduous labour and were often combatants in battle. But the Convention, citing the "special care and assistance" that children require, recognizes that what is appropriate for an adult may not be suitable for a child. This is why, for instance, it sets a minimum age for recruitment into the armed forces and participation in armed conflict. Its recognition of childhood as a 'separate space' means that even when children face the same challenges as adults, they may require different solutions.

Supreme Court Judge Ruma Paul said while addressing a gathering of lawyers, Jurists and Judges that, ensuring justice to children is the responsibility of every citizen, every institution and every limb of the Government.

In *M.C. Mehta v. State of Tamilnadu and others*, Supreme Court had opened the paragraph of the Judgment with a beautiful poem by Mamie Gene Cole, it proceeds with the importance of the statement, "Child is the father of the man". It proceeds to emphasize how a child be groomed, and receive education and nutrition, so as to enable the petals of childhood to blossom to the flowers of youth and manhood.

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87 Ibid, p.3.
88 Ibid.
89 *The Times of India*, 10th June 2003.
2.4 Constitutional Provisions and Legal framework

In order to protect the best interest of children and their childhood, the Constitution of India, the fundamental law of India, came into effect on 26th January 1950, which provides measures to protect the rights of the citizens. These rights include the right to equality (Article 14), the right to freedom including freedom of speech and expression (Article 19 (1)(a)), personal liberty, the right to due process of law including the right to life (Article 21), the right against exploitation (Article 23), religious, cultural, educational rights (Article 29); and the right to Constitutional remedies, (Article 32). In addition to the above basic rights, the Constitution provides certain fundamental rights especially for children. As this class is vulnerable for various kinds of exploitation, due to their physical and mental immaturity, they need special protection. Article 15 of the Constitution prohibits discrimination of citizens on the grounds only of religion, race, caste, sex, place of birth, or any of them. But clause 3 adds: ‘Nothing in this Article shall prevent the state from making any special provision for women and children.’ Therefore, laws can be made giving special protection to children. These rights are included in Part III and Part IV of the Constitution. The fundamental rights in Part III are enforceable in courts whereas the Directive Principles of State Policy in Part IV are guidelines and principles that are fundamental to the governance of the country. It is the duty of the state to apply these principles in making laws. If the fundamental rights are violated, a writ petition can be filed in the Supreme Court or the High Court [Arts. 32 and 226]. Under the Constitution, it is the duty of the state to secure that children of tender age are not abused and forced by economic necessity to enter
vocations unsuited to their age and strength [Art. 39 (f)]. Rights provided under Part IV (Directive Principles) of the Constitution can be read into the fundamental rights provided in Part III and thus become enforceable in courts. Because of judicial interpretation, many of the directive principles have now become enforceable through legal actions brought before the courts (for example, the right to education). There are certain aspects relating to children that are dealt with in the state and concurrent lists of the Constitution of India. It is estimated that there are more than 250 Central and state statutes under which the child is covered in India. Some of the important, special legislations that deal with children are as follows:91

(a) The Child Marriage Restraint Act, 1929: This Act, as amended in 1979, restrains the solemnization of child marriages by laying down the minimum age of marriage for both boys and girls. This law is applicable to all communities irrespective of their religion;

(b) The Prohibition of Child Marriage Act, 2005: This Act prohibits the marriage of a boy if he is below 21 years and the girl if she is below 18 years. Thus the Act stipulates the age bar;

(c) The Child Labour (Prohibition and Regulation) Act, 1986: This Act prohibits the engagement of children in certain employment and regulates the conditions of work of children in certain other employments;

(d) The Juvenile Justice (Care and Protection of Children) Act, 2000: This Act deals with the law relating to juveniles in conflict with law and children in

91 Supra note 8, pp. 6-7.
need of care and protection, by providing for proper care, protection and
treatment by catering to their development needs and by adopting a child-
friendly approach in the adjudication and disposition of matters in the best
interest of children and for their ultimate rehabilitation through various
institutions established under the Act;

(e) The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse)
Act, 1994: This provides for the regulation of the use of prenatal diagnostic
techniques for the purpose of detecting genetic or metabolic disorders or
chromosomal abnormalities or certain congenital malformations or sex-linked
disorders, and for the prevention of the misuse of such techniques for the
purpose of prenatal sex determination leading to female feticide;

(f) The Children (Pledging of Labour) Act, 1933: This prohibits pledging the
labour of children;

(g) Probation of Offenders Act, 1958: This law lays down the restrictions on
imprisonment of offenders under twenty-one years of age;

(h) Young Persons Harmful Publications Act, 1956: This Act prevents the
dissemination of certain publications that are harmful to young persons;

(i) Apprentices Act, 1961: This lays down qualifications for persons above
fourteen years of age to undergo apprenticeship training in any designated
trade;

(j) The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of
Production, Supply and Distribution) Act, 1992: This Act regulates the
production, supply and distribution of infant milk substitutes, feeding bottles and infant feeds with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant feeds and other incidental matters;

(k) The Guardian and Wards Act, 1890: This Act deals with the qualifications, appointment and removal of guardians of children by the courts and is applicable to all children irrespective of their religion;

(l) The Hindu Minority and Guardianship Act, 1956: This provides for the appointment of guardians of minors among Hindus; and


2.5 Government Policies and Action Plans

The Government of India has introduced various National Policies, Plans and Programmes relating to children. The Policies focus on planning and implementation. Some major policy and plan documents are as follows:

(2) National Children's Fund, 1979.


(a) National Commission for Protection of Child Rights;

(b) State Commission for Protection of Child Rights; and

(c) Children's Courts.

2.5.1 National Policy for Children 1974

In 1975, following The National Policy Resolution for Children 1974, A National Children Board was constituted with the Prime Minister as its President. The main objective of creating this Board was to bring about greater awareness and promote the welfare of children and to plan, review and co-ordinate programmes and services directed at children including working children.

In pursuance of the Constitutional provisions embodied in Article 39 clauses (e) and (f), Government of India evolved and adopted the National Policy for
Children. The policy for the welfare of children starts with a goal-oriented preamble:

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

As per the preamble and declaration of the Government, it is crystal clear that child is a national asset. Further as observed by the Supreme Court in Sheela Barse v. Union of India, that, if a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. The National Policy, sets out the measures which Government of India proposes to adopt towards attainment of the objectives set out in the prefatory introduction and they include measures designed to protect children against neglect, cruelty and exploitation and to strengthen family ties “so that full potentialities of growth of children are realized within the normal family neighbourhood and community environment”. The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphans and destitute children.

93 Supra note 71.
There is also provision made in the National Policy for Constitution of a National Children’s Board to provide a focus for planning and review and proper co-ordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and co-ordination of all the essential services. The National Policy also stresses the vital role, which the voluntary organizations have to play in the field of education, health, recreation and social welfare services for children, and declare that it shall be the endeavour of State to encourage and strengthen such voluntary organizations.

The above policy is now outdated as it does not conform to the standards laid down in the United Nations Convention on the Rights of the Child which India has ratified and in conformity of which it is obliged to make laws.94

2.5.2 The National Children’s Fund 1979

The Fund was created during the International Year of the Child in 1979 under the Charitable Endowment Fund Act, 1890. The Fund provides financial assistance to voluntary agencies for implementing programmes for the welfare of children including rehabilitation of destitute children. The Fund should be enhanced and energized. It should have flexibility in supporting new and innovative ventures, to benefit children and the ability to respond promptly to emergencies.95

94 Supra note 8, p.11
95 Supra note 50, p.31.
2.5.3 National Policy on Education 1986 (Modified in 1992)

The National Policy on Education, 1986 was the second policy on education since Independence. It was regarded as a landmark. It redefined educational priorities and made a fresh attempt to cope with the three stands that have influenced educational policy in India, viz., issues relating to quantity, quality and equity. The policy gave the highest importance to Universal Primary Education (UPE). Under the Seventh Five Year plan (1985-90) Govt. of India has adopted a new National Policy on Education. Taking holistic view, the National Policy on Education visualized education as a dynamic cumulative, life long process providing diversity of learning opportunities to all segments of society. It's main purpose was to fulfill the objective of "Education for All" by providing early childhood care and education, universalizing elementary education through formal and non-formal methods, reducing wastage and involving the local community in the management of early education. As a result, new schemes were implemented like the 'District Primary Education Programme' in 1986 and the 'Operation Black Board' in 1987. The Scheme of Non-formal education was revised. The National Policy on Education tried to provide scope for equal access to education for all, irrespective of class, caste, creed or gender. Further The National Policy on Education envisaged, a common educational structure like 10+2+3 and common core curriculum throughout the country. It also sought to remove disparities by catering to the needs of Schedule

\[96 \text{ Supra note 8, p.343} \]
Castes, Schedule Tribes, the handicapped and other minority groups.\textsuperscript{97} The Policy sets a target whereby all children who attained the age of 11 years by 1990 will have received five years of schooling or its equivalent in a non-formal system of education. With this goal in view, 4,90,000 non-formal education centers are proposed to be opened nationally to supplement the formal education system.\textsuperscript{98} The National Policy on Education in India was modified in 1992. Thereafter, Parliament approved a programme of action which sought to launch National Elementary Education Mission—Education for All-in 1993 and the District Primary Education Programme launched in 1994. Currently the emphasis is on universal primary education.\textsuperscript{99} To spread education, top priority should be given to universalisation of elementary education for children between 6 to 14 years. The focus is upon the Non-formal education to help the children who are unable or unwilling to attend full time school. These facilities should be provided by Non Governmental Organizations'.

2.5.4 National Policy on Child Labour 1987

The Government of India announced the National Policy on Child Labour in August 1987. The Policy focuses mainly on three welfare aspects of the child. Firstly, on the enforcement of child labour; Secondly, on the families of the child labourers to avail the benefits of welfare and development programmes meant for this purpose;

\textsuperscript{97} Supra note, 65 , p.28.
\textsuperscript{99} Supra note 8, p. 12.
and Thirdly, to take up projects in areas of child labour concentration. The basic goals of the National Child Labour Policy were to rehabilitate the children withdrawn from employment and reduce the incidence of child labour in areas of high concentration of child labour; (a) By improving health condition for child labour; (b) By providing nutrition through schemes like Integrated Child Development Scheme; and (c) By intensifying the anti-poverty programmes, such as Integrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP) etc…

Child labour is a subset of the total child population and policy on child labour is also a fragment of National Labour. The National Policy on Child Labour is therefore, a combination of how the nation views children vis-à-vis other segments of the population and how it views working children vis-à-vis the rest of the working population.

The National Child Labour Policy was adopted in 1987 to deal with a situation where children are compelled to work, on a regular or a continuous basis to earn a living for themselves and their family, and where conditions of work result in their being disadvantaged and exploited. The Policy is intended to have Legislative Action Plan:

(1) Setting up of Child Labour Technical Advisory Committee to advise the Central Government on addition of occupations and processes to the schedule

contained in the Child Labour (Prohibition and Regulation) Act, 1986 and other child related legislation.

(2) Envisages the strict enforcement of the provisions of the Child Labour (Prohibition and Regulation) Act, 1986 and other child related legislation.

Further, The Policy is focusing on General Development Programmes for benefiting Child Labour: To successfully rehabilitate child labour withdrawn from employment and to reduce the incidence of child labour progressively, the focus is on the environment of the child. By utilizing the ongoing development programmes of other Ministries and Departments for the benefit of the child and his family, child labour can be discouraged.

(1) By providing better and readily accessible education, through formal or non-formal systems of education;

(2) By improving health conditions for child labour; and

(3) By providing nutrition through programmes such as Integrated Rural Development Programme, National Rural Employment Programme etc.

The Policy is focused on areas known to have high concentration of child labour and to adopt a project approach for identification, withdrawal and rehabilitation of working children.101

The National Child Labour Policy was formulated with the basic objective of suitably rehabilitating the children withdrawn from employment and reducing the

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child labour in areas where there is a known concentration of child labour. The policy consists of three main ingredients: the legal action plan, focusing of Central Government programmes, and project based plan of action.

2.5.5 National Plan for SAARC Decade of the Girl Child 1991-2000

In 1992, the Government of India prepared a separate National Plan for the Girl Child for the period 1991-2000. This plan identified three major goals:102

1. Survival and protection of the girl child and safe motherhood;
2. Overall development of the girl child; and

2.5.6 National Plan of Action for Children 1992103

India is a signatory to the World Declaration 1990 on the Survival, Protection and Development of Children and the Plan of Action for implementing it. The National Plan of Action is a follow-up of the promises made by the global fraternity at the World Summit for Children. The major goals of the Plan of Action for 1990-2000 were:

1. Reduction of infant mortality rate to less than ten;
2. Reduction of maternal mortality rate by half;
3. Reduction in severe and moderate malnutrition among under-5 children by half;

102 Supra note 8, p.12.
103 Ministry of Human Resource Development, Govt. of India New Delhi, 1992, See also supra note 8, p.13.
(4) Universal access to safe drinking water and improved access to sanitary means of excreta disposal;

(5) Universal enrolment, retention, minimum level of learning, reduction of disparities, and universalization of effective access of schooling;

(6) Achievement of adult literacy rate of 80 percent in the age group of 15-35, with emphasis on female literacy;

(7) Improved protection of children in especially difficult circumstances;

(8) Assistance to children affected by one or more disabilities, having no access to proper rehabilitative services and especially upliftment of the status of those most marginalized;

(9) Removal of gender bias and improvement in the status of the girl child;

(10) Conservation and protection of the environment for the well-being of children; and

(11) Promotion of advocacy and people’s participation for the child.

2.5.7 National Nutrition Policy 1993

This was adopted by the government in 1993 identified a series of actions for different departments in the area of food-production and distribution, health and family welfare, education, rural and urban development, women and child development etc.

The National Nutrition Policy reflects the understanding that malnutrition is not simply a matter of ‘not enough food’, but is most frequently caused by a combination of factors, including lack of time and attention to child care, inadequate
feeding of the child especially in the first year of life, poor health, unhygienic conditions as well as the lack of purchasing power of poor families. A National Plan of Action on Nutrition was formulated in 1995.\textsuperscript{104}

2.5.8 National Population Policy 2000

It aims at improvement in the status of the Indian child. The National Population Policy, 2000 of the Government of India aims at gender-balanced stabilization but also underscores the need for addressing issues such as child survival, maternal health and contraception, while increasing the provision and outreach of education, extending basic amenities such as sanitation, safe drinking water, and housing, besides empowering women and enhancing their employment opportunities.\textsuperscript{105}

The National Population Policy 2000 recognizes the link between high infant mortality and excessive population growth. The policy statement commits the nation to a reduction of the infant mortality rate to under 30 per 1000 by the year 2010. This necessitates a rapid reduction in neonatal deaths which form a major component of infant mortality. The Policy also aims to achieve 80 percent deliveries in institutions and 100 percent deliveries by trained personnel by the year 2010.\textsuperscript{106}

2.5.9 National Health Policy 2002

This accords primacy to preventive and first line curative care at primary health level and emphasizes convergence, and strategies to change care behaviours in

\textsuperscript{104} \textit{Supra} note 8, p.13.
\textsuperscript{105} Ibid, p. XXIV
\textsuperscript{106} Ibid. p.383.
families and communities.\textsuperscript{107} National Health Policy, 1983, in a spirit of optimistic
empathy for the health needs of the people, particularly the poor and underprivileged,
had hoped to provide ‘Health for All by 2000’, through the universal provision of
comprehensive primary health care services. National Health Policy 2002 has
attempted to set out a new policy framework for the accelerated achievement of
public health goals in the socioeconomic circumstances currently prevailing in the
country. National Health Policy 2002 has been formulated taking into consideration
the ground realities in regard to the availability of resources. In the period when
centralized planning was accepted as a key instrument of development in the country,
the attainment of an equitable regional distribution was considered one of its major
objectives. Despite this conscious focus in the development process, the attainment of
health indices has been very uneven across the rural-urban divide. National Health
Policy 2002 also envisages giving priority to school health programmes which aim at
preventative health education, providing regular health checkups, and promotion of
health-seeking behaviour among children. The school health programmes can
gainfully adopt specially designed modules in order to disseminate information
relating to ‘health’ and ‘family life’. This is expected to be the most cost-effective
intervention as it improves the level of awareness, not only of the extended family,
but the future generation as well. It is widely accepted that school and college
students are the most impressionable targets for imparting information relating to the
basic principles of preventive health care. The policy will attempt to target this group

\textsuperscript{107} Supra note 50, p.30.
to improve the general level of awareness in regard to ‘health-promoting’ behaviour. Social, cultural and economic factors continue to inhibit women from gaining adequate access even to the existing public health facilities. This handicap has an adverse impact on the health, general well-being, and development of the entire family, particularly children. This policy recognizes the catalytic role of empowered women in improving the overall health standards of the community including children.108

2.5.10 National Charter for Children, 2003

The National Charter for Children emphasizes commitment to children’s right to survival, development, and protection. It also stipulates the duties of the state and community towards children and emphasizes the duties of children towards family, society, and the nation.109

In order to ensure protection of rights of children, one of the recent initiatives that the Government of India has taken for Children is the adoption of National Charter for Children 2003 to reiterate its commitment to the cause of children in order to see that no child remains hungry, illiterate or sick.

The object of the Charter is to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the

108 Supra note 8, p.382.
109 Ministry of Human Resources Development, Department of Women and Child Development, New Delhi.
community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation.

The State and Community shall undertake to provide to the children for protecting their best interest. Some of the important components of Charter are as under:

(1) To ensure and protect the survival, life and liberty of all children; (2) Promoting high standards of health and nutrition; (3) To provide all children from families below the poverty line with adequate supplementary nutrition and ensure to provide safe drinking water and environmental sanitation and hygiene; (4) Assuring basic Minimum Needs and Security; (5) To recognize play and leisure to all children; (6) To provide early childhood care for survival, growth and development; (7) To recognize that all children shall have access to free and compulsory education; (8) To provide protection to children from economic exploitation and all forms of abuse especially to move towards a total ban of all forms of child labour; (9) To recognize that all children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation and degrading treatment. (10) To take measures against use of children in conduct of illegal activities; (11) To ensure to provide protection to the girl child; (12) To take steps in empowering adolescent by providing necessary education and skills to equip them to become economically productive citizens. (13) To take steps to treat equally without discrimination on the grounds of race, colour, caste, sex etc.; (14) To provide opportunity for freedom of expression for the all-round development
of the personality and creativity of the children; (15) Ensure to provide freedom to seek and receive information; (16) To provide opportunity of freedom of association and peaceful assembly to all children; (17) To provide support in strengthening the family of the child; (18) To recognize the responsibilities of both parents of their children; (19) Recognize to provide protection with disabilities; (20) To provide Care, Protection, Welfare of Children of Marginalized and Disadvantaged Communities; (21) To recognize that children from disadvantaged communities and weaker/vulnerable sections of the society; and (22) To ensure to provide child friendly procedures in the Juvenile Justice system for children in conflict with law and for children in need of special care and protection.

2.5.11 The National Common Minimum Programme (NCMP) 2004

The Government has formulated this program towards the cause of children. The National Common Minimum Programme specifically highlights the government’s commitment to protect the rights of the children, strive for the elimination of child labour, ensure facilities for schooling and extend special care to the girl child. The National Common Minimum Programme also commits to universalize the Integrated Child Development Services Scheme, to provide a functional Anganwadi in every settlement and ensure full coverage for all children. In order to strengthen primary education, The National Common Minimum Programme highlights the role of NGOs and promises to provide full support to all NGO
efforts. The main components of The National Common Minimum Programme are (a) Commitment to the well being of the common man; (b) Preservation, protection and promotion of social harmony; (c) Enhancement of welfare and well being of farmers, farm labour and workers, particularly in the unorganized sector; (d) A pledge to provide a corruption-free, transparent and accountable government at all times; (e) Administration that is responsive and responsible at all times. It provides a basic affirmation of the Government’s resolve to “protect the rights of children”. The test of National Common Minimum Programme is in how it gets translated into practical programming and investment in children; the National Plan of Action for Children 2005 spells out goals, objectives and strategies to achieve this.

2.5.12 National Plan of Action for Children, 2005

The National Plan of Action for Children 2005 was introduced in the Parliament to provide a road map for steps to be taken for improvements in the lives of Indian Children. It was implemented throughout the country through national measures and through State Plans of Action for Children. This Plan re-affirms the Nation’s commitment to wisely, effectively and efficiently invest its national resources to fulfill its commitments to children. The Plan 2005 is divided into 4 sections; and all categories of rights apply to all age groups, including before birth.

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110 Supra note 50, p.26.
111 Ibid. p.31.
1. Child Survival;
2. Child Development;
3. Child Protection; and

The guiding principles of the National Plan of Action for Children, 2005 are:
(a) To regard the child as an asset and a person with human rights; (b) To address
issues of discrimination emanating from biases of gender, class, caste, race, religion
and legal status in order to ensure equality; (c) To accord utmost priority to the most
disadvantaged, poorest of the poor and least served child in all policy and
programmatic interventions; and (d) To recognize the diverse stages and settings of
childhood, and address the needs of each, providing to all children the entitlements
that fulfill their rights and meet their needs in each situation.\textsuperscript{113}

The Plan has identified twelve key areas keeping in mind priorities and the
intensity of the challenges that require utmost and sustained attention in terms of
outreach, programme interventions and resource allocation, so as to achieve the
necessary targets and ensure the rights and entitlements of children at each stage of
childhood.\textsuperscript{114} These are: (a) Reducing Infant Mortality Rate; (b) Reducing Maternal
Mortality Rate; (c) Reducing Malnutrition among children; (d) Achieving 100% civil
registration of births; (e) Universalization of early childhood care and development
and quality education for all children achieving 100% access and retention in schools,

\textsuperscript{113} \textit{Ibid.}

\textsuperscript{114} Department of Women and Child Development, Ministry of Human Resource Development, Govt.
of India, New Delhi.
including pre-schools; (f) Complete abolition of female foeticide, female infanticide and child marriage and ensuring the survival, development and protection of girl child; (g) Improving Water and Sanitation coverage both in rural and urban areas; (h) Addressing and upholding the rights of Children in difficult. (i) Securing for all children all legal and social protection from all kinds of abuse, exploitation and neglect; (j) Complete abolition of child labour with the aim of progressively eliminating all forms of economic exploitation of children; (k) Monitoring, Review and Reform of policies, programmes and laws to ensure protection of children’s interests and rights; and (l) Ensuring child participation and choice in matters and decisions affecting their lives.

Thus, the Government of India committed to dedicate the National Plan of Action for Children, 2005 to “The Children of India”.

2.5.13 The Commission for Protection of Child Rights Act, 2005.115

The Act provides for the Constitution of a National Commission and State Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

(1) The National Commission for Protection of Child Rights: The Central Government constitute a body to be known as the National Commission

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115 Received the Assent of the President on 20 Jan, 2006, and Published in the Official Gazette of India, extra, Part II, S.1. (Central Act No.4 of 2006), came into force w.e.f. 15.02.2007 vide so 229(E) dated 15.02.2007
for Protection of Child rights to exercise the powers conferred on, and to perform the functions assigned to it.

(2) State Commission for Protection of Child Rights: A State Government may constitute a body to be known as the ............(name of the State) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the functions assigned to, a State Commission.

(3) Children’s Court: For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a Court in the State or specify, for each district, a Court of Session to be a Children’s Court to try the said offences.

2.6 Government Programmes and Schemes

2.6.1 Integrated Child Development Services (ICDS)

This programme is a vehicle for achieving major nutrition, health, and education goals to nearly twenty-eight million children throughout the country (since 1975). A network of Anganwadi centers, literally courtyard play centers, provide basic health, nutrition and early childhood care and development services to address
the interrelated needs of children below the age of six, adolescent girls, and expectant and nursing mothers from the disadvantaged communities.\textsuperscript{116}

2.6.2 National Initiative for Child Protection (NICP)

This is a campaign initiated by the Ministry of Social Justice and Empowerment through the National Institute of Social Defense (NISD) and Childline India Foundation (CIF). National Initiative for Child Protection aims at building partnerships with the allied systems such as the police, the health care system, the judicial system, the Juvenile Justice system, the education system, the transport system, the labour department, the media, the department of telecommunications, the corporate sector, social workers, and elected representatives. National Initiative for Child Protection hopes to achieve this by using advocacy and creating awareness and by involving children in making decisions that will directly affect their lives.\textsuperscript{117}

2.6.3 National Child Labour Project (NCLP) Scheme, 1988

The project is based on The National Child Labour Policy 1987 and accordingly Ministry of Labour, Government of India has implemented the project since 1988 for rehabilitation of the child labour. The National Child Labour Project (NCLP) was launched in 1988, in areas of high concentration of child labour. National Child Labour Project’s are area specific, time bound, where priority is given to the withdrawal and rehabilitation of children engaged in hazardous occupations.

\textsuperscript{116} Supra note 8, p.28.
\textsuperscript{117} Ibid.
The strategy of National Child Labour Project is to implement model programmes consisting of key elements such as:

(a) Stepping up the enforcement of the prohibition of child labour;
(b) Providing employment to parents of children;
(c) Expanding formal and non-formal education;
(d) Promoting school enrolment through various incentives such as payment of stipend; and
(e) Raising public awareness, survey and evaluation.

Presently, National Child Labour Projects are operationalised in 250 Districts spread over in 20 States of India such as Andhra Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Jammu and Kashmir, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Tamilnadu, Uttar Pradesh, Uttarakhand and West Bengal.\(^\text{118}\)

The project aims at withdrawing and rehabilitating children working in identified hazardous occupations and processes through social schools and finally mainstreaming them to be formal education system. Each special school provides for enrolment of 50 children. There is a provision of two educational instructors and one vocational instructor for every special school. A stipend of Rs.100 per month is paid to each child and mid-day meals at the rate of Rs.5 per child per day are also provided.

provided. Besides this, vocational training and health check-ups are essential components of the scheme.\footnote{Children and Work-Annual Report 2004-05 (Department of Women and Child Development, Govt. of India).}

The target group for National Child Labour Project Scheme would be all children below 14 years of age and working in: (a) Occupations and process listed in the Schedule III of Child Labour (Prohibition and Regulation) Act, 1986; and (b) Occupations and processes which adversely affect their health and psyche. The programme components are: (a) To survey to identify children in hazardous occupations and processes; (b) Withdrawal of the children from the factory/work environment through awareness generation and enforcement of the Child Labour (Prohibition and Regulation) Act, 1986; (c) Rehabilitation of children withdrawn from work, through special schools established by the National Child Labour Project society; and (d) Convergence with Sarva Sikshana Abhiyan (SSA) of the Ministry of Human Resource Development and other developmental schemes of different departments of the Government of India and the State Government.\footnote{Supra note 117, pp.93-94.} It also focuses on rehabilitation of children working in hazardous occupations and processes in the age group 9-14 years, is an important activity and a direct responsibility of the project authority. Project societies are required to set up Child Labour Special Schools (Rehabilitation-cum-Welfare Centers) by encouraging voluntary efforts for imparting formal/non-formal education and vocational training. The children in the special schools are to be provided supplementary nutrition, stipend and health care services.
The entire project is required be implemented through a registered society under the chairmanship of administrative head of the district, namely District Magistrate/Collector of the District. Members of the society can be drawn from concerned Government Departments, representatives of the Panchayat Raj Institution, NGOs, Trade Unions, etc.\textsuperscript{121}

\subsection*{2.6.4 INDUS Child Labour Project}

This project is also an infocus programme on the elimination of child labour. It is a technical co-operation project of the Government of India, Ministry of Labour and Department of Education and the United States Department of Labour, within the framework of a "Joint Statement on enhanced Indo-US Co-operation as elimination of child labour" signed on 31\textsuperscript{st} August, 2000 by the Government of India and United States, briefly known as "INDUS". The project is being executed by International Labour Organisation, for which both the Governments are equally contributing.\textsuperscript{122}

The project recognizes that working children belong to specific sections of the population that continue to be marginalized. Therefore, it is the goal of the project to target marginalized populations of children in selected areas and to improve their attendance, performance and retention in education. The main components of the programme are: (a) Enrolment in public elementary education; (b) Withdrawal and provision of transitional education; (c) Strengthen Vocational Training (SVT); (d)

\begin{flushleft}
\textsuperscript{121} \textit{Ibid}, pp. 95-96.
\end{flushleft}
Local Community Institution Buildings; (e) Strengthening public education of child workers; and (f) Social Mobilization.

Various sectors were identified as priority areas for action under the project. They are: Hand rolled Bidi/Cigarettes, Brassware, handmade bricks, Fireworks, Footwear (leather, rubber and plastic), Hand-blown glass bangles, Handmade locks, Hand dipped matches, Hand broken quarries stones, Hand spun or hand loomed silk thread, yarn and fabric.¹²³

The project was practically implemented in some States of our country are; Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh from which five districts from each State have been chosen specifically in the above sectors. An important dimension in the implementation of project is: the existence of efficient, effective and sustainable system for monitoring the child labour situation; and to determine the extent of child labour, in general, as well as hazardous child labour.¹²⁴

The project structure is being organized at three levels i.e. National Level, State Level and District Level.

2.6.5 Integrated Child Protection Scheme-ICPS (Eleventh Plan 2007-2012)¹²⁵

The Ministry of Women and Child Development, Government of India considered ‘Child Protection’ as an essential component of the country’s strategy to place ‘Development’ of the child at the center of the eleventh plan’. The Integrated

¹²³ Supra note 117, pp.97-98.
¹²⁴ Ibid. p.99.
¹²⁵ Supra note 50, pp.28-29 Department of Women and Child Development, Govt. of India, New Delhi.
Child Protection Scheme is, therefore proposed by the Ministry of Women and Child Development as a centrally sponsored scheme to address the issue of child protection and build a protective environment for children through Government-Civil Society Partnership. The main focus of the scheme is that, child protection is integrally linked to every other right of the child. Failure to ensure children’s right to protection adversely affects all other rights of the child. Child protection is also closely linked to the achievement of the Millennium Development Goals (MDGs) and policy makers have failed to see this connection or chosen to overlook it. The approach to Child Protection is, a comprehensive rights based approach; The cardinal principles of ‘protection of child rights’ and ‘best interests of the child’ form the fundamental basis for the scheme; Both prevention and protection are central to the approach; Mobilizing inter-sectoral response for reducing vulnerabilities and strengthening child protection and setting standards for care and services are important elements; to have Government Civil Society Partnership; and implementation through a decentralized structure. The Scheme aims at: expansion and improved Reporting and Redressal Mechanism; Improved institutional care; Quality Non-institutional and Alternative Care; Counseling and Family Support; Training and Capacity Building; Strengthening the knowledge base; and Child Tracking System including web-enabled child protection data management software and website for missing children. Some important Principles of Integrated Child Protection Scheme are: (a) child protection as a shared responsibility; (b) Reduce child vulnerability; (c) Strengthen families; (d) Promote non-institutional care; (e) Build inter-sectoral linkages and responsibilities;
(f) Create a network of services at community level; (g) Establish standards for care and protection; (h) Build capacities of all stakeholders; (i) Provide professional child protection services at all levels; (j) Strengthen crisis management system at all levels; (k) Reintegrate with family and community; (l) Address protection of children in urban areas; and (m) Carry out child social audit.

2.6.6 National Resource Centre on Child Labour, 1993

The task of progressively eliminating child labour calls for an effective mechanism to provide inputs for policy formulations and program support. A modest beginning in this regard was made by setting up a Child Labour Cell in the V.V. Giri National Labour Institute (VVGNLI) in 1990 with the assistance of the Government of India and UNICEF. The increased pace of activities and emerging needs for various types of support by different agencies led to the up-gradation of the Child Labour Cell into the National Resource Centre on Child Labour (NRCCL). The NRCCL was set up in March 1993 with financial support from the Ministry of Labour.126 The objective of the centre is to endeavour to contribute to the attainment of the Government Policy of progressive elimination of child labour.127 The centre is to assist the National and State Governments, NGOs, policy makers and other social groups in the field of child labour through a research, training, technical support, advocacy, media management, documentation, publication and dissemination to various target groups towards progressive elimination of child labour in India.

127 Supra note 100, p.20.
National Resource Centre on Child Labour has also been conducting orientation and sensitization programmes for personnel involved in child labour projects.128 The National Resource Centre on Child Labour has built up an impressive database on child labour and is now assisting the Ministry of Labour in the implementation of child labour programs. Research and training are two other important activities of the National Resource Centre on Child Labour. 129

2.7 Critical analysis of Laws and Policies

It is observed from the study of various Laws and Policies of the Government that, there is no nexus between the law and policies and they tend to work in isolations. For instance, The Right to Education is linked with the issues of Child Labour, Juvenile Justice, Child Marriages, Health and Nutrition, etc. The Policy perspectives relating to the children and childhood are not clear and the same leads to confusion. In pursuance of the Constitution (Eighty Sixth Amendment) Act 2002, Right to Education Act, 2009 was enacted, which provides Education as a Fundamental Right of Children between six and fourteen, by which every child of this age is supposed to be at school. But the Child Labour (Prohibition and Regulation) Act, 1986 provides for regulation of the conditions of work of children below fourteen years in non-hazardous occupations and process. That means a child below the age of fourteen year can work as a labourer. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995 is borrowed from

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128 Supra note 118, p.96.
129 Supra note 125.
the Education, Health, and Nutrition Policies and the children in need of Care and Protection under Juvenile Justice (Care and Protection of Children) Act, 2000. The present Criminal Laws do not address the cases of child abuse and needs clear legal definition for child sexual abuse. The National Policy on Children, 1974 is outdated, so it is to be revamped. So more child oriented and rights based policies are desired for their effective implementation. These require integrated and convergence approach for better protection of child and childhood and protection of their rights in the best interest.

2.8 Children’s Right to Education and the Indian Constitution

The Constitution of India came into force in January 1950, which contains provisions for survival, development and protection of children. These core ideas are incorporated both in part III and part IV of the Constitution, pertaining to fundamental Rights and Directive principles of state policy. The Constitution of India recognizes the vulnerable position of children and their right to protection. Based on the Doctrine of “protective discrimination” Article 15 (3) it guarantees that, nothing shall prevent the state from making special provision for women and children. Thus it is intended to give special attention to the children by making special laws and policies to safeguard the right of the children. Right to equality, freedom of speech and expression, protection of life and personal liberty, free and compulsory education and abolition of child labour and right against exploitation are enshrined in the Indian Constitution in Articles 14, 19(1)(a), 21, 21-A, 24, 39, (e) and (f). The Government of

130 See for detailed analysis of interrelationship between the two parts, supra note 72, p.19.
India in its 10th Five Year Plan (2002 to 2007) emphasizes on Right based approach, with regard to “survival, development and protection of children”. Education imbibes values and wisdom. A man without education is a brute and there is no second opinion about it. Education seeks to build up the personality of the pupil by ascertaining a physical, intellectual, moral and emotional development.\textsuperscript{131} Education of children is an important right of a child. The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.\textsuperscript{132} The child is entitled to receive education which shall be free and compulsory at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment and his sense of moral and social responsibility and become a useful member of society. The best interest of the child shall be the guiding principle of those responsible for his educational and guidance. This responsibility lies in the first place with his patents. The child shall have full opportunity for play and recreation which should be directed to the same purpose as education. Society and the public authorities shall endeavour to promote the enjoyment of this right.\textsuperscript{133}

The World conference on “Education for All” held at Jomtien in March 1990, marked the emergence of an International consensus that education is the single most

\textsuperscript{131} \textit{University of Delhi v. Ramanath}, AIR 1963 SC 1873.
\textsuperscript{132} Principle 5 of the UN Declaration on the Rights of the Child, 1959.
\textsuperscript{133} Dr. Bindu M. Nambiar, “Children and Human Rights”, \textit{Journal of Indian Legal Thought}, Vol.5:149, M.G. University, Kottayam, 2007, p.162.
vital element in combating poverty, empowering women, protecting children from hazardous and exploitative labour and sexual exploitation, promoting human rights and democracy, protecting the environment and influencing population growth.\textsuperscript{134}

The framers of Indian Constitution have envisaged that within 10 years of the commencement of Constitution, steps should be taken to provide free and compulsory education for all children until they reach an age of 14. The right to education as a fundamental right gained momentum in 'Mohini Jain's case'.\textsuperscript{135} The Constitution bench of Supreme Court in the case of Unnikrishnan\textsuperscript{136} ruled that right to education is a fundamental right that flows from the Right to life in Art. 21 of the Constitution, every child/citizen has a right to free education up to the age of 14 years and there after the right would be subject to the limits of the economic capacity of the state. This decision was upheld and confirmed by the 11 Judge Constitutional bench of the Supreme Court in \textit{TMA Pai Foundation v. Union of India}.\textsuperscript{137} In the year 2002, the Indian Constitution through its 86\textsuperscript{th} Amendment Act, has made “Right to Education a Fundamental Right”.\textsuperscript{138} The State is obliged to/duty bound to provide free and compulsory education to all children of age 6-14 year in such manner as the State may by law determine. It was also provided that, it is the fundamental duty of a parent or

\textsuperscript{134} Art. 7 of Universal Declaration of Human Rights, 1948, also known as World Declaration on “Education for All”


\textsuperscript{137} AIR 1996, SC 2652.

\textsuperscript{138} Article 21-A of Constitution.
Guardian to provide opportunities for education to his child between the age of 6 to 14 years.\textsuperscript{139}

In view of the revolution made in the spectrum of education and in the light of Supreme Court Guidelines laid down in various cases and Constitution (Eighty Sixth Amendment) Act, 2002 which has made three specific provisions in the Constitution to facilitate the realization of free and compulsory education to children between the age of six and fourteen years as a fundamental right. These were (i) Adding Article 21A in Part III (Fundamental Rights), (ii) Modifying Article 45, and (iii) Adding a new clause (k) under Article 51A (Fundamental Duties) making the parent or guardian responsible for providing opportunities for education to their children between six and fourteen years.\textsuperscript{140}

\textbf{2.8.1 The Right of Children to free and Compulsory Education Act, 2009: Salient features}\textsuperscript{141}

The Act provides for free and compulsory education to all the children between the age of six to fourteen years.

a) That every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfied certain essential norms and standards;

\textsuperscript{139} Amendment Article 51-A of the Constitution by inserting clause (K) by Constitution (Eighty Sixth Amendment) Act, 2002, Sec. 4.
\textsuperscript{140} \textit{Supra} note 62, p.20.
\textsuperscript{141} (Central Act no.35 of 2009) received the Assent of the President on 26\textsuperscript{th} August 2009, came into force w.e.f. 01-04-2010.
b) ‘Compulsory Education’ casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

c) ‘Free Education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him/her from pursuing and completing elementary education.

d) It imposes duties and responsibilities upon the Appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

e) To provide a system for protection of the right of children and a decentralized grievance redressal mechanism.

2.9 Conclusion

It is pertinent to give more emphasis on concept of child. It’s evident that child is an organic cell of the Society and National Policies and Judicial decisions set a guidelines that children are supremely important national asset. This statement should be transformed into reality. In order to avoid confusion and dilemma, there should be a one standard age under the Constitutional Law, in legislations enacted by the Government and Government Policies and Plans. This needs integrated legislation on child, child rights instead of providing plethora of legislations. There is a need to
have independent and autonomous body to deal with the multi-dimensional issues relating to children like education, health, nutrition etc. at the Central level, State level and Local level to address the problems. There is also a need for change in the perceptions and attitude of the law enforcing agencies and general public.