CHAPTER 8
CONCLUSION AND SUGGESTIONS

India, the union of twenty-eight states and seven union territories, is a socialist, secular, and democratic republic. The Indian constitution envisions a parliamentary form of government and is federal in nature with some unitary features. The size and population of some of India’s largest states is comparable to some countries in Europe, Africa, Latin America, or Asia. India continues to wage its battle against poverty, and its attendant, such as, high mortality rates, malnutrition and illiteracy, the greatest victim of which are children and women.¹

UNICEF’s mission is to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided in doing this by the provisions and principles of the Convention on the Rights of Child often referred as CRC or UNCRC. It is an international convention setting out the civil, political, economic, social and cultural rights of children. Nations that ratify this international convention are bound to it by international law.

This convention was adopted and opened it for signature on 20th Nov. 1989. It came into force on 2nd September 1990, after it was ratified by the required number of nations. As of November 2009, 1994 countries have ratified. It once ratified, the governments must report on the measures adopted and progress made in advancing children’s right in their countries in the form of a report submitted to the committee on the rights of the child² appointed by the United Nations under Article 43 of the convention.³

¹ http://www.wcd.nic.in/crc.pdf/crc/1pdf, accessed on Dec, 2009
Key points about children’s rights are:

1. The UN Convention on the Rights of the Child (CRC) is the main international document which defines children’s rights. Developed in 1990, it has been adopted by every country in the world apart from the United States and Somalia.

2. The convention has four main principles:
   - A child’s right to life, survival and development.
   - A child’s right to be treated equally. This means that no child should be discriminated against.
   - A child’s right to participate in activities and decisions which affect them.
   - All actions should be based on the ‘best interest’ of the child.

3. There are various ways in which the convention can be used to influence activities in practice.

THE CONVENTION IN PRACTICE: The United Nations Convention on the Rights of the Child is one of the most widely accepted international conventions. Almost all countries of the world including India has agreed to it. However, progress has been quite slow in putting it into practice. Reasons for this include misunderstandings about convention, which has been seen by some people as being “anti-family” or simply about allowing children to have their own way. Neither of these true but these misconceptions need to be addressed when seeking to increase awareness of the convention and what it means in practice. Poverty is a major barrier which prevent implementation of the convention. However, it can be used to guide efforts aimed at promoting development and eliminating poverty. This will ensure that children gain maximum benefit from such actions.

In practice, the convention can be used:
   - As a framework for designing programmes that work with children.
• As a way of evaluating programmes and national strategies. For eg, it is possible to look at how practices in a particular country affect orphans and other vulnerable children and compare that with the provisions of the convention.

• As a different way of looking at particular issue.

The last point is very important it is as if the convention is a pair of glasses or a magnifying glass. It can be used to look more at a particular issue from a children’s rights perspective. The way an issue appears when wearing these ‘glasses’ may be quite different from the way it appears when looked at from another perspective. Issues which can be examined in this way include:

• Terms used to describe orphans and other vulnerable children. For ex the term ‘AIDS orphans’ increases stigma and discrimination. Using this term goes against the convention.

• Types of care for eg, care in institution does not allow children and young people to develop fully, rarely allows for their participation and promotes stigma and discrimination. It can be seen as going against the convention.

• Other forms of care activity including provision of shelter and psychosocial support

• Poverty and development
• Access to health and education
• Sexual exploitation and abuse
• Child labour.

Therefore, the importance of child has now widely been recognized in the Convention on the Rights of Child, 1989. The Government of India submitted its first country report on the Convention on the Rights of the Child in February 1997 which stated that:

"Unless the life of the child in the family and community improves, all development efforts would be meaningless. There is, therefore, a need to raise awareness and create an ethos of respect for the rights of the child in society to meet his or her basic development needs. Advocacy and social mobilization are two crucial processes which are being emphasized to achieve this end with India's ratification of the UN convention on the rights of the child, the 'rights approach' to child development is gradually gaining importance and will henceforth form the basis of government's strategy towards child development".

There has been a paradigm shift in approaches towards children. The shift in focus is from the welfare to the development approach.5

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In the last decade, we have witnessed a tremendous progress in the areas of literacy especially female literacy and women employment. Neeru Burra, a social activist, has observed that if there is at all blueprint for tackling the problem of child labour, it is education.6 In Kerala, there is high literacy rate as compared to whole of India. Now the Right to Education Act has been passed. As far as the history of the passing of the Act is concerned, it started only with the passing of 86th in Amendment Act (2002) via Article 21(A) (Part III) which seeks to make

6 M.C. Mehta vs. State of Tamil Nadu, AIR 1997 SC 709.
free and compulsory education a fundamental right for all children in the age group 6-14 years. A draft of the legislation named Free and Compulsory Education for Children Bill 2003, was prepared. In June 2005 the CABE (Central Advisory Board of Education) Committee drafted the ‘right to education’ Bill and submitted to the Ministry of HRD. MHRD sent it to National Advisory Council (NAC) where Mrs. Sonia Gandhi is the chairperson. NAC sent the Bill to PM for his observation. In July 2006, the Finance Committee and planning commission rejected the Bill citing the lack of funds. But in the last, more than six decades after independent, the Indian government has cleared the Right to Education Bill that makes free and compulsory education a fundamental right for all children between the ages of 6 and 14.

Thus, the Free and Compulsory Education Bill 2003 was the first attempt of the Central Government to draft a comprehensive legislation on education after the 86th Constitutional Amendment that made education a fundamental right. The Bill was an excellent example of bureaucratic empowerment, and the reservation of upto 25% of the private schools seats for the economically backward students gathered widespread criticism and Bill was discarded.7

The Right to Education Bill 2005 is the second attempt by the Central Government to set the education system right. Another attempt was in the form of Right to Education Bill, 2009 that finally takes shape of Right of Children to Free and Compulsory Education Act, 2010.

- Free and compulsory education to all children of India in the 6 to 14 age group
- No child shall be held back, expelled, or required to pass a board examination until completion of elementary education.

• A child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age; provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time limits, as may be prescribed: provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.
• Proof of age for admission: For the purpose of admission to elementary education, the age of a child shall be determined on the basis of birth certificate issued in accordance with the provisions of Births, Deaths and Marriages Registration Act, 1856 or on the basis of such other document, as may be prescribed. No Child shall be denied admission in a school for lack of age proof.
• A child who completes elementary education shall be awarded a certificate;
• Calls for a fixed student – teacher ratio;
• Will apply to all of India except the state of Jammu and Kashmir;
• Provide for 25 percent reservation for economically disadvantaged communities in admission to class one in all private schools;
• Mandate improvement in quality of education;
• School teachers will need adequate professional degree within five years or else will lose job;
• School infrastructure (where there is problem) to be improved in three years, else recognition cancelled;
• Financial burden will be shared between state and Central Government.

The Act drafted with great caution, however, it is not free from defects:
• The main shocking aspect of the Act is that there is not a word about education ministers and departments. Literally not a word. Who has been running our education system all these years? There is no reflection about their functioning or performance, let alone evaluation or reforms. The Act simply adds one more layer of central bureaucracy on the top of all the state education departments and assumes that all is necessary is to get our machinery moving.

• The Act surprisingly overlooks the spontaneous revolution that has been taking place in elementary education in India in the last decade or so: the private schools for the poor. They are everywhere, from urban slums and middle class neighbourhoods to our remotest habilitations. They charge about the Rs. 25 to 200 per month and provide relatively decent quality of education. Between 1991 and 2001, India’s literacy rate increased by about 13 percent, from 52 to 65 percent. This is the highest increase in any ten-year period in India’s history. How was this achieved? Was it due to governmental efforts? The overall government expenditure on elementary education was 1.78%, at GDP in 1990-91. Under the structural adjustment programme of early 1990s, it declined to 1.65% by 1994-95. Then it gradually arose to 2.02% in 2001-02. According out for the decade of 1991-2001, government spending increased marginally from 1.78 to 1.92 percent of GDP. But the literacy rate jumped by 13 percent.

And the Act has nothing to say directly about these unrecognized private schools for the poor, but by allowing only recognized schools to exist after its passage, it outlaws them and hopes that they will all disappear. The government that can’t prevent half of the electricity and water from being stolen or can’t close down spurious drug factories thinks that it will be able to banish elementary schools where parents and their children voluntarily, often with a free government school
next door. The Act closes down the whole sector that is really helping India to raise its literacy level, and to improve access and quality of education.

- Further it lacks provisions to compel the state to provide adequate funds.
- It denies the fundamental right of children below six years to nutrition, health, and pre-primary education by falsely equalizing it with Integrated Child Development Scheme (ICDS).
- It also denies right to secondary and senior-secondary education.
- It permits violation of the ‘neighbourhood’ principle by the government- run elite and private schools, allowing them to charge fees and screen and exclude children.
- It doesn’t provide for the States/UTs to regulate private unaided schools, leaving them free to indulge in profiteering anti-child practices and other violations.
- Fails to guarantee child’s mother tongue as medium of education, even at primary stage. (For children of linguistic minority groups, this violates Article 350 A).
- Contains subtle provisions that exclude disable children from schools. The Act provides that a child of severe or profound disability cannot be provided elementary education in neighbour school shall have a right to provide education in an appropriate alternative environment. However, the alternative education arrangement are not defined in the Act at all.

**Child labour** is another major problem faced by India, which is also directly related to the child. If the literacy rate is high then there can be decrease in child labour because the educated people can better understand and differentiate between sending children to work and to school. As there has been several labours legislation enacted alongwith Article 24 of the Constitution of India which prohibits the employment of children in mines, factories and hazardous industries,
The Child Labour (Prohibition and Regulation) Act, 1986 was enacted with the intention to ban the employment of children in specified occupation and processes. But the Act failed to fulfill the objective desired due to following reasons.

- The Act fails to cover the unorganized sector where 75 percent of the children are employed.
- The word 'hazardous' has not been defined and is left to the Child Labour Technical Advisory Committee to define hazardous occupations and processes.
- Section 3 of the Child Labour (Prohibition and Regulation) Act 1986 legalises employment of children where the occupation, work or processes is carried on by the occupier with the aid of his family.
- Employers, Trade Union and corporate Sector can play a positive role to deal with this problem. There is need to create awareness in the society towards the hazards caused to child by labour.
- The Labour Ministry notification has imposed a ban on the employment of children as domestic help, restaurants, hotels, motels and dhabas. The ban is effective from October 10, 2006.

In December 2000, the Parliament in view of its international obligations passed the Juvenile Justice (Care and Protection of Children) Act, 2000, to protect and safeguard the interest and welfare of such children and to give effect to the minimum standard. By the amendment in the Juvenile Justice Act, the law makers have tried to spell out the role of state as facilitator rather than a doer. The very fact that the Act has been amended demonstrates the willingness of

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8 For detail see Supra chapter-3
governmental machinery to ensure that children in difficult circumstances are the responsibility of everyone and by amending the same, it has been tried to give a new face to the juvenile justice system in India. The new Act has been renewed with spirit to show greater sensitivity to the needs and rights of a child. A recent amendment has been introduced named as the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 with the objective to make a call for adoption of child-friendly approach in adjudication and disposition of matters. The amendment has further widened the ambit of the definition of child in need of care and protection by including 'abandoned and surrendered children' and 'a juvenile found begging, a street child or a working child. But still the Act has been criticized on few counts:\(^9\)

- This Act has expanded the definition of the child in need of care and protection very significantly. It could lead to undue interference in the lives of several poor children and their families by the 'system'.
- The Act fails to expressly lay down the age of innocence, i.e., the minimum age below which this Act would not be applicable.
- The problem of special care and needs of the disabled children have been ignored. The education, training, and recreation of children have not been provided for. Besides this the health and nutrition of the children have not been provided.
- The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial.
- The Act is silent on inter-country adoption. The Act empowers the Juvenile Justice Board to give a child in adoption whereas it is the Child Welfare Committee that deals with children in need of care and protection.
- Standard of quality care have not been laid down.

\(^9\) Supra n. 5 pp. 307-308.
In other fields also the law is not adequate to deal with the problems of children. One of them is violation of the **Child Marriage Restraint Act 1929**. Thousands of child marriages are performed in violation of this Act under the current law, if a child is sexually abused, a case can be filed for statutory rape or ‘outraging the modesty of the women’. In case of the girls and for ‘unnatural sexual offences’ in the case of boys. The ordinary criminal laws are totally inadequate to protect the children who are victims of sexual abuse. The legislation does not include the common forms of child sexual abuse nor their impact on the children.\(^{10}\) Although the Act has been repealed by the new Prohibition of Child Marriage Act, 2006 but situation remains same.

The testimony of **child victims** is not recorded sensitively by the police/judge/prosecutor/magistrate. The recording of the statements of child victim needs special provision in the Cr. P.C. There is no such provision as such. Under the present system, the natural habitat of victim is generally disturbed which is a source of trauma of the child. The delays in the system at every stage further add trauma of the child victim. There are several cases pending in the courts as the trial goes on for years.\(^{11}\)

Children in India suffer from various **health problems** also during their early childhood and even before birth leading to short ended and unhealthy lives. Here also the law is not adequate to protect the health of children across India. Issues which may be examined under this particular head are:

- The constitution of India provides in Articles 39(e) and (f) that the State shall, in particular, direct its policy towards securing the health of children. Further, in Article 47 of the constitution, the State is directed to raise the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the

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\(^{10}\) Id; p. 224.

\(^{11}\) Supra n. 2.
consumption except for medicinal. Purpose of intoxicating drinks and of drugs which are injurious to health. Unfortunately, in the constitution of India, health is not a fundamental right of citizens and, therefore, cannot be justiciable in courts. The provision of health care is contained in the directive principles and it is a duty of the State to raise the level of nutrition and the standard of living and to improve public health. Article 21 of the constitution of India deals with ‘Right to life’ which is a fundamental right and justiciable in courts. The Supreme Court has observed ‘that the right to life includes the right to live with human dignity and what goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter.’

- In respect of TB, the public health scenario has not shown any significant decline in the pool of infection amongst the community, and there has been a distressing trend in the increase of drug resistance to the type of infection prevailing in the country.

- A new and extremely virulent communicable disease, HIV/AIDS, has emerged on the health scene since the declaration of NHP, 1983. As there is no existing therapeutic cure or vaccine for this infection, the disease constitutes a serious threat, not merely to public health but to economic development of the country.

- Another area of grave concern in the public health domain is the persistent incidence of macro and micro-nutrient deficiencies, especially among women and children. In the vulnerable subcategory of women and the girl child, this has the multiplier effect through the birth of low-birth weight babies.

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12 Supra n. 5, pp. 379-380.
14 Supra n. 5, p. 381.
15 Ibid.
besides and serious ratifications of the consequential mentally and physically retarded growth.\textsuperscript{16}

- Diseases like diarrhoea, pneumonia and measles continues to kill children. Pneumonia killed 4,10,000 children in 2004 while measles immunization coverage is still below 60\%. Moreover the sanitation facilities are still pathetic in most places; in 2004, 700 million people in India did not have access to good sanitation.\textsuperscript{17}

**Female Foeticide** is another problematic area surrounded by issues of concern. Some of them are\textsuperscript{18}:

- It is so many years since the enactment of the pre-natal diagnostic techniques (Regulation and prevention of misuse) Act, 1994. It is also over seven years since the amendment of PNDT Act, 2003 came into existence. Yet enforcing the law has proved to be a major challenge given resistance from the unethical medical practitioners.

- The appropriate authorities are ineffective and are not held accountable by the government and civil society and the powerful doctor’s lobby renders their actions null and void.

- Even the law agencies like the police or the courts tend not to view the breaking of law by doctors and medical professionals as serious offences against women and children and against the law of the land.

- Lack of adequate medical facilities is leading to increasing reach of private health service providers, whose practices are difficult to monitor.

- Moreover, there are two important issues of policy associated with this decline in the child sex ratio. One is the obsession with population control, which assumes that all the failure in development can be mono-causally linked to population explosion. The other more important issue is the

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\textsuperscript{17} **Supra** n. 5,Chapter-7

intrusion of the two-child norm into the Panchayat Raj Acts of many states, despite its absence from population policy of 2000, feeding to disqualification of many elected representatives. Most of the excluded belong to the SCs and STs. Some experts have suggested a link between the imposition of the two-child norm and selective abortion. Imposition of two-child norm then, cannot be the route to population stabilization, for it may lead to a disturbingly unbalanced population.

Every day man, women and children are trafficked across India and throughout South Asia, with India being the source country as well as a transit and destination point. However, cross-border trafficking is only the tip of iceberg. There is considerable degree of trafficking between state within the country. Many of those trafficked are children, sometimes as young as 8 years old, or over younger. Thus, child trafficking is another major problem & the main issues of concern is that:

- There is a dearth of comprehensive statistics on child trafficking, both within the country and across the borders. Absence of a tracking system makes it difficult to assess the real situation and plan for it. Records of migration are not maintained, birth registration is poor, and registration of marriage is a big problem.  

The above stated problems are with children whose leg and limbs are still intact but what about the disable children (physically or mentally). It is unfortunate that society continues to treat disability with apathy or at best pity, on the one hand, and revulsion on the other. In spite of recognition of the need to make special efforts for the physically and mentally challenged, the efforts have been inadequate. Discrimination against disabled person is serious challenge to the very fabric of the country and the rights guaranteed under the constitution of India. Teachers in schools are not trained to deal with such children. Moreover there is dearth of special services for the disabled children. The pediatric wards in

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19 Id; p. 36.
the government hospitals are not capable of dealing with children with disabilities, particularly in terms of infrastructure and resources.\(^{20}\)

Last but not the least, left issue is of children in conflict with the law.

SUGGESTIONS

Child protection or child rights are considered to be those issues, in a world full of conflict and economic, social, intellectual and violent confrontations on which we have achieved some consensus. But the question is, have we taken necessary measures to make right of children meaningfully available to them for their overall social, cultural and individual growth? In the last century there have been various conventions and covenants held at national, regional and international level and various declarations signed to acknowledge the need for global consensus on the rights of children. Following are considered to be the milestones in this regard.

- Geneva Declaration of 1924 a five point text drawn by the 'save the children international organization.
- 1948 Universal Declaration of Human Rights
- 1959 Declaration of the Rights of child adopted by the UN General Assembly.
- 1979 Convention on Elimination of Discrimination Against Women (CEDAW)
- 1990 World Summit on Children
- 2002 SAARC convention for the promotion of child welfare in South Asia.\(^{21}\)

The United Nations Convention on the Rights of Child (CRC) represents a turning point in the international movement on behalf of child rights. This comprehensive document contains a set of universal legal standards or norms for the protection and well-being of children. The range of rights can be summarized as three:

\(^{20}\) Id; p. 54.
\(^{21}\) See chapter-2
Provision, Protection, and Participation. Children have a right to be provided with certain services ranging from a name and nationality to health care and education. They have a right to be protected from certain acts, such as torture, exploitation, abuse, arbitrary detention, and unwarranted removal from parental care and children have the right to participate in the decisions affecting their lives. The CRC gives children their basic human rights – civil, economic, social, cultural and political – which enable children to achieve their full potential.22

Since the independence of India; we have seen committed efforts of Indian Government for the protection of child rights in India at all levels. As a commitment toward children, the Government of India has set up the Department of women and child development in 1985. The creation of a separate department was a landmark step in bringing child rights to the centre-stage. Another positive step in this regard was accession to the convention on the rights of child in 1992.

It is note worthy that in the last three decades several major policies and action plans have been announced for improving the status of children. But still the commitment undertaken by India require that legislative administrative and other measures follow to implement specific policies and a review and revision of all pertaining laws to the children. The following are the suggestions which can be helpful in child protection in India.

• The quality of education of child determine the quality of life in nation. Though the education has become a fundamental right with the 86th Amendment Act, 2002 that had added a new Article 21-A which provides that “the state shall provide free and compulsory education to all children of the age of 6-14 years as the state may, by law determine”. Further the passing of Right to Education Bill in 2008 paves the way for the centre to pass the Right of Children to Free and Compulsory Education Act, 2010 which provides the right of children to elementary education free of cost. However, the Constitution of India, legislature and Supreme Court have declared the education a fundamental right, but it does not speak about

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22 Supra n. 5, p.17.
millions of children who are in the age group of 0-5 years. It is needed that constitution should again be amended and the children of age group 0 – 5 years should be included, as by the time the child reaches the age of 6 years he/she gets in to the child labour due to poverty.\textsuperscript{23}

- Moreover, the constitution only ensures that the state shall provide primary education to the children upto the age of 14 years, and the secondary and higher education is contingent and conditional upon the economic capacity of state. The right to education will be meaningful only and only if at all the level education reaches to all the sections of the people otherwise it will fail to achieve the target set out by our founder father to make Indian society an egalitarian society.\textsuperscript{24}

- Law and Bills don’t make children go to school, unless there is understanding of social responsibility. Thus, the first responsibility is to make parents to understand the value of education.

- In India, almost 50\% of the population remains illiterate, and an estimated 58 million out of 185 million children aged between 5 and 14 years are not in school.\textsuperscript{25} The Indian government reported in 2003 that the enrolment rate in rural areas nationwide was only 71\%, with gender disparity of 0-84, meaning a 16\% lower rate for girls. In some states the levels are considerably lower. The nature of the resulting challenge is made all the greater by the fact that the overall social picture in the country has been far from rosy. Thus, the poor state of primary education is thus but one of several urgent developmental priorities that the Government of India must balance, and this balancing may well mitigate the value of constitutionally entrenching education as a right.\textsuperscript{26}

\textsuperscript{24} Ibid.
\textsuperscript{25} R. Banerji, “Poverty and Primary schooling: Fields studies from Mumbai and Delhi”, Economic and political weekly, March 4, 2000, p. 795.
• Though the Act of Free and Compulsory Education to all Children, it does not define the word ‘free’. Presently, it is claimed that the Govt. schools are giving free education to the students as they do not charge any fee. However, the poor parents have to bear other expenses pertaining to school uniforms, books, examination fees etc. This implies that the parents still have to pay for the education. Thus, the concept of free education is certainly limited. Therefore, it is recommended that there should be insertion of definition of free education in the Act.

• The Right of Children to Free and Compulsory Education Act should include an unambiguous provision of imparting equitable quality education for all children. There should not be any cheap alternative education for poor children. Moreover, the Act must include a financial memorandum for the nutrition, health care and developmental opportunities for this age group of 6-14 years.

• Educate a boy child, educate a person, educate a girl, educate a family.

   In our patriarchal society, educating a girl child has other benefits also. An educated woman, when she becomes a mother nurtures the child and gives him or her values that sustain development. This will also adversely affect the maternal mortality rate and infant mortality rate. Our imperative should be to build an environment which focuses on the right of girl child in totality where the girl are given freedom and opportunity to grow and develop as a responsible child citizen of tomorrow. This is because today educated girl child is tomorrow’s empowered women.

• Child Sexual Abuse and exploitation is not new, the extent of the problem is – children are sold, rented out, and sexually abused by adults everywhere. In India, under the present legal system there are no mandatory reporting system of cases relating to child sexual abuse. The United States has detailed statutory provisions to deal with issue of
detention and prevention. All their states have enacted child abuse reporting statutes by 1967, with the following basic elements:

- A definition of conditions worthy of reporting,
- List of persons that required reporting,
- The degree of certainty required warranting reporting the suspected abuse,
- Penalties imposed for failure to report, and
- Delineation of the reporting procedures.

- In UK, the child witnesses are entitled to prepare for the court experience. Such people can play a critical role in the child’s ability to cope with the court and in re-enforcing message. In US also, there is a child witness code, the purpose of the code is to ascertain the truth, reduce trauma to children, create conditions that will allow children to provide reliable and complete evidence, increase the number of children who are able to testify in legal proceedings and protect the rights of persons accused of crime.

There is also recognised joint forum for developing, monitoring and reviving child protection policies. This forum is the Area Child Protection Committee (ACPC) in the UK. This multidisciplinary forum in USA is the Child Protection Services. The Dutch Child protection Boards are public service under the control of Ministry of Justice in Netherlands. The Boards service reports from mental health agencies, schools, the confidential doctors, the police and so on, and investigate whether the rights of child are being violated and how that violation influence the child’s normal development. They also seek to determine the causes of the violation and the measures necessary to restore the rights of the child. The Indian legal system need to adopt such international laws in the interest of the child.

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27 Supra n. 5, p. 242.
28 Id; p. 245.
29 Ibid.
• In order to deal with the problem of child trafficking, it is noticed that there has been a very little emphasis on investment in prevention of trafficking. Such investment would cost effective because it would reduce vulnerability of children and their families and increase the opportunity for future development of children, families and the community. In India, such investment in prevention should be at the heart of all action plans to combat trafficking. Further the greater media exposure and the representation of women as sex objects have been identified as one of the causes of increasing trafficking of women and children. Media representation of women reinforces the notion that women are sex objects for the gratification of men. Therefore, it is suggested that the media should be restrained from representing the women as a sex-object.

• Delayed trials, inadequate legal machinery, lack of trauma counseling centres and legal aid services further deny justice to victims of trafficking. Thus, it is the high time to make the trial speedy and to set up more trauma counselling centres and legal aid service centres.

• State Government should revise the rules issued long back under SITA (Suppression of Immoral Traffic Act, 1956) and issue a fresh set of rules under ITPA. These rules should also list out the procedure which is to be followed in rescue and post-rescue operations, keeping the best interest of victims.

• A large number of the victim as well as clients are teenagers or adolescents, especially school and college students. There is a need to address the issue of sexuality within this group and sensitizes them about the human rights of women and children. Appropriate NGO’s could be asked by the educational institutions to carry out such target oriented advocacy in school, colleges etc.

32 Supra n. 18, p. 37.
33 Ibid.
Now-a-days, sex-tourism is a growing menace in the society. Law enforcement agencies and civil society need to take special efforts in this direction. Coordination among the State police agencies and central law enforcement agencies, as well as other related depths like tourism and urban development, etc. has to be brought out in an institutionalized manner. The provisions of Goa Children’s Act, 2003 could be a model for other states to bring in such provisions and ensure their implementation. There is a need for extra-territorial legislation on the subject.

ITPA provides for establishment of special courts not only by the State Governments. But also by the Central Government. However, the letter has never been invoked and the former has been minimally implemented. The concerned government departments should take initiatives in setting up special courts, and preferably exclusive courts, to deal with the trial of offences under ITPA, so that justice can be delivered expeditiously.

Further, the Constitution of India, under Article 23, prohibits trafficking in human beings. This includes trafficking for all purposes. The United Nations Convention on Trans-National Organized Crime, to which India is a signatory, also speaks about trafficking for all types of exploitation. Therefore, it would be appropriate that the existing law is replaced by a comprehensive legislation, covering all forms of trafficking. It can be divided into two categories: (a) for commercial sexual exploitation, which includes exploitation in brothels and non-brothel-based situations, pedophilia, pornography, cyber pornography, sex tourism or sexual exploitation taking place under the façade of massage parlours, beauty parlours, bear bars, etc. (b) other types of exploitation, including begging, forced delinquency, organ transplant by force, deceit or lure, false adoptions as well as trafficking for labour in field of industry, entertainment, domestic environment, etc. or any other exploitative situation. Therefore, the law has to be comprehensive enough to address all issues of trafficking. Further, the definition of prostitution and
prostitute provided under section 2(f) should be amended to include both males and females.

- Moreover, under section 7 of ITPA, two categories of persons are liable: (a) any person who carries on prostitution and (b) the person with whom such prostitution is carried on. Therefore, part (b) is the section that becomes applicable to the 'customers'. A very hard fact is that trafficking cannot be prevented unless deterrent action is taken against those who 'demand' the services. Therefore, the punishment to the 'customers' has to be deterrent. Section 7(1A) prescribes a minimum of seven years imprisonment and fine only if the victim is a child, and in other cases, as per section 7(1) (b), the punishment for the 'customer' is only three months imprisonment and no fine at all. This needs to be charged. There should be provision for stringent punishment and a mandatory fine on the 'customer'.

- The preamble of ITPA should incorporate in itself the purpose and orientation of upholding the rights of women and children. There should be a specific section in the Act with specific focus on women's rights and child rights.

- Further, lack of awareness of human rights of women and children is the springboard from which the exploiters gain impetus. Once the vulnerable sections are adequately aware of their rights, they themselves will feel strengthened.

- Juvenile courts have to be revitalized with the most expansive vision and based upon a deeper understanding of psychological and social forces which bring children into court. There has to be juvenile court that is sensitive to the developmental needs of juveniles in each case, flexible enough to respond to new discoveries in social sciences research, and willing to invest in and experiment with promising new interventions for offenders. Juvenile courts should be vital community resources.
developmental perspective may be usefully employed in formulating legal responses.  

- Personnel in the juvenile courts are the key. Unless the juvenile court can identify and trained good people, juvenile justice system will not realize their potential. Judges in the juvenile courts should be especially trained to recognize the educational, social, and treatment needs of the children in crisis.  

- There is need to introduce the concept of guardian or child’s legal counsel or a social worker involved throughout the court proceedings in which children are involved. NGO’s can pressurize the government for law reform. For successful compliance of court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. One area where further action is required is that of providing a support person for children during the investigative process, courtroom appearance and after the trial is over, has much to commend itself, and would enable the child to have a single support person to help him/her navigate the entire process.  

- It is also significant to note that there is too much reliance on plea bargaining. When a child is in an institution or before strangers, he is asked to choose between going to trial and pleading guilty. The deal is almost impossible to resist. A child’s response to such an offer may not be voluntary. In a juvenile court, plea bargaining is particularly destructive. Children who are scared cannot understand the various forces at work. The negotiation does not further the interest of the child but furthers the interest of the system. Pressure are generally applied by probation officers to encourage children to plead guilty. Children who are not guilty  

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35 Supra n. 5, p. 324.  
and who have to plead to something that he did not do, undermine the entire system. Therefore, this plea bargaining is need to be done in presence of a representative of the child’s best interest.

• A juvenile court of this century must have interdisciplinary connection with a variety of professions: law, medicine, psychiatry, psychology, and child welfare administration etc. There should be speedy disposal of cases involving children in order to ensure that the developmental needs of the child are addressed and the child continues to live in his growth and development.37

• The implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 remains incomplete, till date. The enactment of any legislation does not guarantee its enforcement. Implementation has to be taken care of, by the government, as well as by professional and social agencies.

• Juvenile Justice has been given some shape with Juvenile Justice (Care and Protection of Children) Act, 2000. Those dealing with children need to sensitize themselves with this Act. Provisions and problems of the Act need to be understood. Then only, can improvement be suggested. Lastly one should not forget that a juvenile delinquent, could be, nothing more than a poor child caught red-handed in the struggle for survival and he or she deserves an empathic treatment.

• As far as the problem of adoption is concerned, Hindus have provisions relating to same in HAMA and some in Juvenile Justice (Care and Protection) of Children Act, 2000. Muslims and Christians have their own law of adoption according to their own religion. However, what is required is that there must be a uniform law on adoption throughout India. A child should not be discriminated on the basis of his/her religion.

37 Supra n. 5, p. 325.
• It is also suggested that there is a need of comprehensive law on inter-country adoption where a child is more vulnerable instead of in-country adoption.

• Further the problem of child begging is an acute problem. To cope up with Bombay Prevention of Begging Act, 1959 was passed by Bombay state and that was extended to 18 other states also. But what about remaining states. Is it not the responsibility of these remaining states to frame a uniform piece of legislation on child begging? Thus the need is that firstly there must be a central legislation to cope up with the problem and secondly all authorities must be directed to introduce the legislation in their concerned states.

• We are at the threshold of 21st century. But still in few areas of some states Devdasi system is still observed. This is the violation of basic right of a girl child where she is donated to a temple for giving her services. Strong steps in this regard are required to be taken.

• Further, today’s world is the world of global terrorism. What may happen that the other countries will give training to the young boys who are below 18 years and they will be saved from severe punishment. Hence there must be an amendment that the Juvenile Justice Act will not be applicable to the juveniles of the other countries as well as the juveniles who indulge into anti-national activities as well as indulge into terrorist activities have to be excluded from Juvenile Justice Act and tried under the provisions of Cr. P.C. and they are also liable to the sentence as per I.P.C. If this amendment is not there then our judicial system also can not punish them severely. So to avoid further events and incapability in the law the amendment mentioned below should be there.

In Juvenile Justice Act 2000 in chapter 1 preliminary. Short title extent and commencement –

38 The incident which happened at Mumbai dated 26/11/2008 is very bad and in that incident one terrorist named Ajmal Aamir Kasab was arrested.
The Act may be called the juvenile justice (care and protection of Children) Act 2000.

It extends to the whole of India except the state of Jammu and Kashmir.

This Act is not applicable to who is not citizens of India and who is citizen of India but waging war against Nation (India).

It shall come into force on such date as the central govt. may, by notification in the official gazette, appoint. So, according to me (3) should be added

- Woman is embodiment of love, grace, and compassion. She creates, she nurtures, she supports, she loves, and she is a power house. These words aims to bring forth awareness into the atrocities that are being committed against the women and her unborn girl child. The decrease in sex ratio is the result of traditional son preference society and modern technology. Though the parliament has approved the amendments in both PNDT, Amendment Act 2002 and MTP Amendment Act, 2002 to make laws more stringent on the issue of abortion and sex-determination. But these have to be complemented by addressing social and cultural biases against the girl child and enhancing their status.

- Further, misuse of law, wrong implementation of law has added to the woe of female foeticide. To combat it firstly, it must be realized that even a full proof law is just beginning of a struggle to curb notorious practice like female foeticide. As Haskar points out that law reform cannot be divorced from more fundamental struggle to transform social values. Moreover, it is necessary to understand that progress of science and technology is mandatory for the progress of a nation, but matters most is its manifestation and beneficial application. Female foeticide is a reflection of what happens when technologies are misused. The only long term solution is to change attitude. Government, civil society and media should work hard in hard to combat this inhuman practice.

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society as a whole should ensure that the girl is safe, secure, educated, economically and emotionally independent. Worsening sex ratio is bound to have a devastating effect on the human civilization. Time has arrived to declare a crusade against female foeticide, both on individual and collective level, to stop elimination of unborn daughters only because of their sex.

- Target the clinic and organisations that spread awareness regarding sex selection techniques for having male child, including community patrolling squads. Generating awareness that practice of male child preference is a form of gender bias can also be a suggestive measure to combat female foeticide.

- Determining the age of child is a big problem. In a country like India, many children do not have birth certificate. This procedure needs to be simplified. Besides, it is recommended that till such time as age is determined the benefit of doubt should be in favour of the child.

- Along with general education, vocational training should be imported to the children to make them economically independent in their adulthood. All the programme for education meant for child labour should go side by side with nutrition health care, and social welfare as a package within ICDS.

- Educating the child is not enough without educating the parents. Hence, there should be a greater emphasis on adult education, which will teach about nutritional needs of the child and also make the parents aware of the hazards of sending their children to work.

- It is suggested that the government take up different programmes like food for education, providing financial assistances, self-employment of rescued child labour, after completion of their study and establishment of production cum-training centres for child labour with stipend, etc. to reduce the incidence of child labour. Efforts should also be taken by the voluntary organisation to involve the local public and parent of child
labour. So that they become aware of the efforts made by the government for the upliftment of child labour.

- Government should implement such action plan in the areas where child labour concentration is much higher. These areas should get priority. Most of the child workers hail from poor families they often suffer from under nutrition. The long working hours and the additional energy requirements for excessive work and physical growth creates nutritional deficiencies in them. Therefore, the provisions of supplementary feeding programme for working children should be given an important place in the improvement of their working conditions. Employer should be persuaded to provide nutritional food to child workers at subsidized rates, if not free of cost.

- The employer must be required to pay minimum wage to every child, below which no child should be employed. The minimum wage should be provided as directed by Hon’ble Supreme Court in M.C. Mehta vs. State of Tamil Nadu. Moreover the owners of unorganized sector must be directed to maintain a register of employment dealing with the names of all child workers, their obligation to furnish this detail to the child welfare department concern to see how far the employers are carrying out the legislation requirements with regard to child workers.

- The Act although ban the child labour and restraining hotels and restaurants from employing children. But the purpose of such legislation would all be futile if it is not implemented as envisaged and there is a strong need to devise some proactive means to sensitize the society about the law as well as the problems of child labourers. Some of the other immediate proactive steps are:

- To inform the masses that child labour is an offence, all newspapers, TV channels and radio stations must undertake serious publicity for about a year.

40 AIR 1997 SC 699.
• All the state and Central Government employees shall have to be ordered to refrain from employing children in their households and other places.

• The child labour employed within the premises of any government establishments or offices must be liberated with immediate effect and be rehabilitate through providing them with education and other help.

• Conduct raids and liberate all the child labours from all the city based hotels and establishments and accord them rehabilitation coupled with their education.

• All hotels and apartments must be under constant scrutiny and monitoring.

• A public officer in every police station shall undergo training classes to build awareness about the Child Labour (Abolition and Regulation) Act, 1986.

Yes, the Act is great for all those persons who oppose child labour and believe that instead of working, a child needs education and recreation for his/her mental and physical development. Yet the battle is far from over. Apart from raising voices against its family implementation at ground level, many civil society organizations are demanding another amendment in the Act with respect to government's definition of child labourer as those who are 14 years old and lower. This is a big loopholes in the Act and makes the Act futile. A child, according to the Juvenile Justice (Care and Protection of Children) Act, 2000, is defined as below the 18 years of age. It is the same with the international Child Rights convention too. India as a country has accepted it and is one of the signatories. So now it is imperative to undertake struggle declaring any 18 years old child doing any work shall have to be treated as child labour. The child labour (Abolition and Regulation) Act needs another amendment and for which we have to fight. Child labour is child labour whether the age is 16 or 18 it is still on offence. The future of our children is the future of our country. Hence we have to fight for another amendment in the child labour Act.
There is a need to make the government functionaries, NGOs and professionals working with children more aware about the Convention on the Right of Child (CRC), CRC should be made part of the school curriculum and school children should be involved in dissemination of information about child rights through child to child and child to community activities. Child Rights should also be included in curriculum of all colleges as well as in professional training of all those who work with children or provide services to them. Awareness of CRC should percolate down to gross roots level through greater participation and partnerships. Government should forgo a partnership with NGOs and media to spread awareness about child rights especially involving those NGOs who have been active in working with children and protecting their rights.

Lack of accountability, information and proper documentation hinders effective co-ordination and monitoring of child rights at all levels. Urgent action is required to strengthened these aspects. It is also imperative to empower existing committees set up for children’s programme to monitor child rights at State, District, block and Village levels. It should be in consultation with and having representation from government civil society, NGOs, gram Panchayats and children.

Legislation is one of the main weapons for empowering children and providing them with justice. The Indian legal system has to evolve a great deal in securing the rights of the child. Firstly, there has to be some synchronization of the upper age limit for children if the rights of childhood have to be realized. The Convention on the Rights of the Child creates, for the first time, a balanced and clearly articulated framework for determining the rights that a child has under international law. Even with its inherent problem of enforcement, the convention can be catalyst for legal reform since it sets out the rights a child should be able to claim at some point in the national legal system. This multilateral treaty has given
a new dimension to concept of child rights that must be appreciated at the national level if domestic legal systems are to incorporate this holistic perception of rights. The balanced and holistic approach to child rights in the convention encourages law reform to be integrated with basic changes in government Policy and other initiatives, so that there is a concerned efforts to impact on social practice and the lives of citizens. Any reform in law should be strategic and aimed at systemic change.

- A campaign to promote awareness of convention, the constitutional provisions and the situation of children in India must be launched. The campaign should focus on information dissemination on child rights at the state and national levels. It should also demand the implementation of the commitments made by the Government of India. The campaign must undertake initiatives at national level through awareness building networking, and child-centered policy advocacy, for building a conducive institutional environment wherein all the internationally agreed and accepted child rights are fully practiced and promoted.

- Lastly, the protection to child will remain on papers if it is not supported by adequate allocation of funds in union budget. The graph of 2010-2011 Budget for children is not attractive to cope with the problem of child. If we want to give protection to child it should not received least attention in the union budget.

In brief the need is to mould attitude and perception of adults and children towards child rights. For this, each one of us as an important member of civilized society must fulfill our obligation to the young generation by providing, conducive environment to every child so that its all round personality, physical, mental, moral and spiritual is developed. Especially, in relation to children from the weaker section of the society, an effective safety net must be created in order to protect them from not being devoured by the powerful crime mafia of the society. In India, already much work has been done by the government in this direction yet there is lot more to be done in practice for proper enforcement of
their rights and effective implementation of laws, policies and programmes relating to survival and welfare of children.

Children can no longer be considered as passive recipients of services. Government and civil society must accept children as partners and facilitate their participation in matters which affect their lives. The challenge is, therefore, to change the mindset that children can no longer be object of charity, philanthropy, and welfare. They have to rights to be protected. Let us work together to provides fear free, peaceful world to our future generations especially the poor ones so that they should not feel deprived from the feel of what real childhood is. As rightly observed by Kofi A. Annan, the Secretary, general of UN that 'there is no trust more sacred than the one the world holds with children, there is no duty more important than ensuring their rights are respected and their welfare is protect...41

And moreover as Gabriel Mistral said in his poem:

We are guilty of many errors and 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,
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...
Dare we answer "Tomorrow"?42

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