CHAPTER-1
INTRODUCTORY

The Convention on the Rights of the Child defines the basic rights of children covering multiple needs and issues. Some of the rights of children are – the right to education, the right to expression, the right to information, the right to nutrition, right to health and care, the right to protection from abuse, right to protection from exploitation, and right to protection from neglect etc.

For achieving the above stated rights India became a party to the UN Declaration on the Rights of the Child, 1959. Accordingly, it adopted a National Policy on Children in 1974. The policy reaffirmed the Constitutional provisions for adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. Accordingly, the government is taking action to review the national and state legislation and bring it in line with the provisions of the convention. It has also developed appropriate monitoring procedures to assess progress in implementing the convention.

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children 1990. In pursuance of the commitment made at the World Summit, the Development of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India’s National Plan of Action – keeping in mind the needs, rights and aspirations of approximately 300 million children in the country.

The priority areas in the plan are health, nutrition, education, water, sanitation and environment. The plan gives special consideration to children in
difficult circumstances and aims at providing a framework, for actualization of the objectives of the convention in the Indian context.

It shows that India has changed a lot in the last sixty three years with regard to protection of children and it continues to change even today. But all change is not development. Women, youth and especially children are facing tremendous social pressure. A recent report of UNICEF (2005) on the state of the world’s children under the title “childhood under threat”, speaking about India, states that millions of Indian children are equally deprived of their rights to survival, health, nutrition, education and safe drinking water. It is reported that 63 percent of them go to bed hungry and 53 percent suffers from chronic malnutrition.

The report says that 147 million children live in *kuchha houses*, 77 million do not use drinking water from a tap, 85 million are not being immunized, 27 million are severally underweight and 33 million 5 never been to school. It estimates that 72 million children in India between five and 14 years do not have access to basic education. A girl child is the worst victim as she is often neglected and is discriminated against because of the preference for a boy child.¹

As per the child rights charter, a universal definition of ‘child’ includes all persons under the age of eighteen. 40% of India’s population is below the age of 18 years which at 400 million is the world’s largest child population.

What happens when a country of the size of India has over 3 million children living on the streets? Or has over 150 million children working as bonded labourers? Or one out of every six girl child does not live to see her 15th birthday? What happens when despite having a national policy for compulsory primary education, only 50% of children have access to education?

The statement 'children are supremely important national assets'\(^2\) and are 'the greatest gift of humanity'\(^3\), stops making sense, then! In fact, it sounds like an ominous prophecy. For how can we explain that even after 63 years of independence, half of India's children are illiterate? The reason being the question of child protection has emerged as one of the most vibrant issues for discussion in this new millennium.

The reality is hard to us, as children are a part of the disadvantaged minority group so far as realization of human rights and social justice are concerned. The main reason for this lacuna is that children are still not a complete political entity in true sense of the term. Besides they are generally physically, mentally and economically defenceless.

The violation of child rights are various, ranging from child labour, child trafficking to commercial sexual exploitation and many other forms of violence and abuse. For instance, India has the largest number of child labourers under the age of fourteen in the world. Although poverty is cited as main reason responsible for it, other factors such as discrimination, social exclusion, as well as lack of quality education or existing parents attitude need also to be considered.

Trafficking of children also continues to be a serious problem in India. The nature and scope of trafficking range from industrial and domestic labour, to forced early marriages and commercial sexual exploitation. Present studies show that over 40 percent of women sex workers enter into prostitution before the age of 18 years. Moreover, for children who have been trafficked and rescued, opportunities for rehabilitation remain scarce and reintegration process arduous.

We must not forget that the children are the ultimate goal for development. We must also realize that the efforts for advance in human

\(2\) Laxmi Kant Pandey vs. Union of India, (1984)2 SC 244, 249.

conditions must start as early as possible beginning with the child and the mother well-being even before the child is born. Protecting the health and education of today’s children is not only the first and foremost right but also is the most basic and wisest of all investments in social and economic development of society. Despite health improvement over the last thirty years, live continues to be lost to early childhood disease, inadequate newborn care and childbirth-related causes. More than 2 million children die every year from preventable disease. The infant mortality rate in India is high as studies shows maternal deaths are similarly high.

Children in India continues to lose their life to vaccine preventable diseases such as measles, which remains the biggest killer. The government initiative to curb polio by Pulse Polio Immunization Programme is failing by the news published in every day tomorrow newspaper that – ‘a child die due to polio drop’.

During world war-II Winston Churchill said, “there is no finer investment for any community than putting milk into babies”. This appeal to the people everywhere, this fundamental faith in juvenile justice, this reorganization of the worth of the infants born and unborn, is the beginning of juvenile justice, says Justice Krishna Iyer. Malnutrition limits development and the capacity to learn. It also costs lives; about 50% of all childhood deaths are attributed to malnutrition. Malnutrition in children is not affected by food intake alone; it is also influenced by access to health services, quality of care for the child and pregnant mother as well as good hygiene practices. Girls are more at risk of malnutrition than boys because of their lower social statues. The study shows malnutrition in early childhood has serious, long term consequences. Malnourished children are less

---

likely to perform well in school and more likely to grow into malnourished adult, at greater risk of disease and early death.

Moreover, despite a major improvement in literacy rates during the 1990’s, the number of children who are not in school remains high. Gender disparities in education persist: far more girls then boys fail to complete primary school. The study shows the girls belonging to marginalized social and economic groups are more likely to dropout of school at an early age.

Neglecting the children means loss to the society as a whole. If children are deprived of their childhood – socially, economically, physically, mentally – the nations get deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry.\(^6\) It may be that the aforesaid appeal lies at the back of the saying that “child is the father of man”. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned.\(^7\)

UNICEF is committed to protecting every child from violence, exploitation, abuse and discrimination. But given prevailing social, economic and cultural inequalities in India, a large number of children, especially girls are forced to work inhospitable, unsafe and exploitative condition. Some of these children are members of families living in remote areas with few, if any, livelihood option. Such children are often pushed into low-paid labour or commercial sex work either to escape abusive conditions at home or because poor or unemployed parents send them out in the hope of getting some extra money.

---

\(^6\) Bandua Mukti Morcha vs. Union of India, AIR 1997 SC 2218, p. 2220.
\(^7\) M.C. Mehta vs. State of Tamil Nadu, AIR 1997 SC 701.
These hopes lend a child into the world of crime. The delinquent behaviour of child is more dangerous to oneself, family and to nation at large.

Childhood is a universal human experience and every society has a vital stake in its children. The future and stability of a society depends on the quality of its children. In fact, in every child the foundation of a nation is laid. The proper development of the child is, therefore, imperative for the proper growth of a nation. This applies to the internal community also. Obviously child welfare is of Supreme importance to the mankind. Child welfare is an expression which means “the general well being of the child”. In all ages this has depended principally on the social valuation of children and the care accorded to them. At the present time the child is considered as an important social unit and is held to be entitled to all that makes for healthy living, sufficient recreation, schooling adopted to his natural leaving methods, intelligent home care and the right to develop his abilities to their fullest extent. The expression refers to the ‘total well being of the child.’ It includes not only the care of maladjusted and delinquent children but also the development of child physical, mental, emotional and social faculties. In nutshell, it ‘emphasizes the need of continuously taking into account all aspects of the child’s well-being and dealing with ‘the whole child’, not some isolated phase of his development.”

The statement of objects and reasons appended to the Central Children Act, 1960 emphasize the importance and protection of children.

---

10 Ibid.
11 See, the object and reasons appended to the Children Act, 1960. The preamble to the Act of 1960 puts the same theme thus : An Act to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children.
“Children are the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social element in the community. The state has the duty of according proper care and protection to children at all times.”

Over the years, our strategic focus on children in the country has evolved from welfare to development to a right based approach. The fifth plan saw a shift in focus from child welfare to child development. The ninth plan viewed child development not merely as a desirable societal investment for the nation’s future, but also as the right of every child to achieve his/her full developmental potential. Some landmark inter-ministerial and inter-sectoral steps towards child development were taken during the tenth plan period. The Sarva Siksha Abhiyan was launched to increase enrolment of children in schools and to ensure that every child has access to quality education. Coverage under the Integrated Child Development Services Scheme increased and National Programme for Adolescent Girls was initiated. The XI plan is committed to survival, protection and all-round development of children of all ages, communities and economic groups. Recently the National Commission for Protection of Child Rights has been notified. India has committed to meet the Millennium Development Goals and is a signatory to many International Conventions including the Convention on the Rights of Child.

The Government considers the development of children as its key concern and firmly believe that in the ultimate analysis, it is childhood that holds potential and sets the limits for the future development of society. Today investing in the requirements and priorities of children is considered to be the *sine-qua non* of a developed nation.
RESEARCH HYPOTHESIS: The present era of globalization had further degrade the status of child. The race of economic growth between industries played a major role in suppressing the rights of child. Further the neglected role of parents, society and nation at large towards children has worsened the situation. The present hypothesis rests on the presumption that if the situation remained unchecked this silent problem will curb the future of nation. For this, a comprehensive study of issues relating to child protection is required in order to strengthen the present legal control mechanism and plug the loopholes and also to modify the social norms and practices.

OBJECTIVES OF STUDY: Child is very important segment of human society. Yet from the dawn of human society, the child has been exploited mercilessly and indiscriminately. The trouble with child rights begins with the very definition of a child in law. The age of majority for a child in India is 18 years. But there are several grey areas in the law here. For instance, under the child labour regulation, a child is a person under 14 years and according to section 3 of Indian Majority Act, 1875, “every person domiciled in India shall be deemed to have attained his majority when he shall have completed the age of 18 years” and further according to customs of Hindu undivided family, a child becomes member of the joint family, the moment he is born and eligible to hold property. As far as the case of criminal responsibility of a child is considered, Section 82 of the Indian Penal Code provides total immunity from criminal responsibility upto the age of 7 and from 7 to 12 years, the liability depends upon the capacity of understanding of child. In India, the law considers anyone less than 18 years to be a minor, not competent to take major decisions affecting herself or others for the purpose of Indian Majority Act, Contract Act and Juvenile Justice Act etc. However, under section 375 of the Indian Penal Code, the girl aged 16 to 18 is given the right of consent to sexual intercourse. Yet she cannot marry at that age even with the consent of her parents. Solution? I will try to find out the answer of this question with the help of present study.
Secondly, in general living of families with adequate incomes, parents go to their profession everyday and children are left to go to school. However, such is not the case for the 218 million of world’s child labour who daily engage themselves working long hours under harsh, dangerous and exploitative conditions. This child labour abuse has affected national and international attention during the last decade of the 20th century. At National level we have provisions in the constitution of India, Indian Penal Code and Acts relating to child labour like The Factories Act, 1948; The Mines Act, 1952; the Child Labour (Prohibition and Regulation) Act, 1986; etc. besides these Supreme Court has also given some directions regarding the manner in which children working in hazardous occupation are to be withdrawn from work and rehabilitated. Moreover, Indian Government has also played a crucial role by framing some national policies on child labour to combat the same. Still the issues of concern relating to the problem are not coming down. Child labour is still the cheapest and most disciplined labour. Their working hours have been long, their wages have been meager. It means that we are failing to curb the evil, even with the help of so many different laws. Where we are failing? Is there any lacunae in the provision? Is punishment not sufficient? These are some blatant questions we still have to find answer.

Thirdly, violence against child is going on unhidden and cases related to these go unreported because of diverse socio-economic conditions prevalent in society. In our society when sexual morals are rigid, sexual abuse of children are on the rise. The sexual exploitation of children not only has damaging and long-term impact on the victim, but also affects the families, communities, and society at large. The constitution of India, Indian Penal Code etc. contains provision for the protection of children but still at present there is no comprehensive legislation on child sexual abuse. Apart from this, the problems of child sex Tourism, child pornography and child commercial sexual exploitation are also increasing day-by-

\[\text{Infra; chapter-3.}\]
\[\text{Infra; chapter-3, n. 71.}\]
day. The Supreme Court in public large’s case, had given some directions relating to child sex workers but all were in vain. The enforcement of law in India has been weak in dealing with abusers, exploiters and traffickers of children. There have been several gaps in implementation. One of the objectives of present research work is to find out these gaps and weakness.

Child Marriage involves the Marriage of anyone below the age of 18 years. It is the Marriage of a child to an adult or another child, is the fourth issue of concern relating to protection of child. The magnitude of problem is so high that in a study carried out between the years 1998 to 1999 on women aged 15-19 it was found that 33.8% were currently married. The 2001 census reports that there are nearly 300,000 girls under 15 who have given birth to atleast one child. According to UNICEF, 40% of the worlds child Marriages take place in India alone, resulting in a vicious cycle of gender discrimination; illiteracy and high infant and maternal morality rates. We have the prohibition of Child Marriage Act, 2006 which has repealed the old Child Marriage Restraint Act, 1929 with some far reaching changes. But the question is whether this Act of 2006 is sufficient to combat the social evil of child marriages or whether further amendment is required in the Act? The present study will try to find out the answers.

Fifthly the problem of Female foeticide and infanticide is another grey area of child protection. Girl child particularly vulnerable to human rights violations, simply because they are girls, and therefore require additional protections. The girls are denied their most basic rights such as their right to be born and to live. The years of 1971, 1994 and then 2002 were the years when laws were framed and amended according to present situation to deal with the problem. Government has also provided some incentives with the help of schemes etc. still we are failing to save the girl child, why? Are the Acts not comprehensive, are

---

14 1997(4) Bom. CP 171.
15 Infra; chapter 3, n. 151.
16 Id; n. 152.
17 Id; n. 157.
they not amended well or are they not implemented well in India? These are some crucial questions that I tried to find out the answers with the help of present research work.

Sixthly, the problems of missing children, child beggars and child with disability is not new in India, still we have failed to protect the child.

The question of custody, education and maintenance is not less important. Adoption is another area where child require legal and social protection. These are multifarious areas in which child is involved and needs protection.

Over the last few years, the government has taken a number of measures relating to children. The most important has been the setting up of a full-fledged ministry for women and child development. Government has taken many initiatives and framed policies, programmes etc. relating to children. Many critical areas of child protection has also been taken in the Eleventh Five Year Plan (2007-2012) like early childhood Development. The girl child and child labour etc. Many National policies were also framed for protection and development of child from time to time and these policies and programmes as all we knows depend upon the annual budget for child protection. Thus, for the purpose the unraveling of union budget is must in the present study to deduce out the results.

Thus in brief, however, what is required is complete reexamination of the legal framework for children as a whole, identification of gaps and reconciliation of existing anomalies within the law and implementation of policies, programmes and schemes meant for children.

RESEARCH METHODOLOGY :- The methodology of research is doctrinal invoking primary and secondary sources. The literature in the form of number of books, newspaper, magazines and internet sites, journals, articles and conventions etc is analysed. The literature relating to the rights of child, various traditions and customs, various support systems like constitutional, legislative, government programmes and policies and also the international conventions and conferences affecting the national scenario has been studied in detail. The internet had a
substantial effect to research work, without which the research would have been much more difficult. All sources of information, digital or otherwise, have been cited in footnotes to the main text and these may serve as useful tools to guide those desiring to undertake in depth research in any of the areas that the work contains. One word of caution regarding websites, sometimes links might have lapsed, the footnotes, only tell of those sites that existed at the time of writing of work.

CHAPTER SCHEME :- The present research has been presented schematically by dividing into eight chapters detailed as under:

Chpater-1 ‘Introductory’ articulates the problems profile, object of study. The research hypothesis and research methodology has been included. It also describes the scheme of chapters.

Chapter-2 ‘Protective Environment for Child : Global and National Perspective’ traces the historical development of child rights in international scenario. The role of United Nations convention on Rights of Child, World summit for Children, International Labour Organization, Untied Nations Children Fund and South Asian Association for Regional Cooperation has been explained. Various steps taken by Indian Government at National, State and District level is also part of this chapter.

Chapter-3 ‘Violation of Child Rights : Situation Assessment’ deals with legal age of child under different statutes. Meaning of Child Protection and various protection issues like Child Labour, Child Sexual Abuse, Child Commercial Sexual exploitation, Child Marriage, Child Pornography, female foeticides, missing children and child with disability etc. are discussed and various protection Laws at International and National Level dealing with these problems has been critically analysed.
Chapter-4 ‘Child Welfare Under Criminal Law’ deals with juvenile delinquency. The role of Untied Nations System to deal to children in conflict with law is part of this chapter. At national level the law relating to delinquent juveniles i.e. Juvenile Justice Act 1986, and Juvenile Justice (Care and Protection of Children) Act, 2000 has been analysed. The rule of our Hon’able Supreme Court in dealing with juvenile cases has also been discussed.

Chapter-5 ‘Protection to Child Under Commercial Law’ deals with various commercial Law topics like ratification, restitution, service contracts. It also deals with child’s liability in Torts, in Contract of Agency, Income Tax Law and Negotiable Instruments. Various advantageous and disadvantageous provisions relating to child, of above mentioned sub-topics has been explained.

Chapter-6 ‘Child Protection in their Respective Personal Laws’ The topics of custody, guardianship, maintenance, illegitimacy and adoption of a child under Hindu, Muslim, Christian and Parsi’s law has been discussed in detail under his chapter.

Chapter-7 ‘Role of Government in Protection of Child’ deals with the Millennium Declaration at International level. The commitments by India to achieve the millennium declaration goals by Five Year Plans, various policies, programmes, and scheme etc. has been explained in detail. The union budget allocated for child protection has also been analyzed.

Chapter-8 ‘Conclusion and Suggestions’ deals with conclusion based on the present research work. Some meaningful suggestions has also been drawn for protection of child in India.