CHAPTER II

RIGHTS OF THE CHILD: INDIAN PERSPECTIVE

The discussion on the international attempts for the protection of the rights of the child brings about the question of application of the principles in the municipal sphere, especially when India is a party to the international resolve to protect the rights of the child. An analysis on the legal protection of rights of the child in India in the light of the international move, requires a four-fold exposition of the concept, viz:

i. the constitutional protection

ii. the national policy for children

iii. the legislative frame work

iv. the enforceability of international conventions through Indian courts

(i) Constitutional Protection

Prior to the international conventions and resolutions, the Independent India has formulated in its Constitution, provisions for the welfare of the children. Before the adoption of the Indian Constitution itself, the Constitution of India Bill 1895 (Home Rule Bill), Commonwealth of India Bill 1925 and the ‘objective resolution’ adopted by the Constituent Assembly on 22 January 1947 contained provisions meant for the protection of weaker sections. Starting from the preamble itself of the Constitution, the unequivocal intention of the State to assure protection to children can be seen, in either explicit or implied terms. The

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1 See for details, Khwaja Abdul Muntaquim, Protection of Human Rights - National & International Perspectives, 1st edn., Law Publishers India Pvt. Ltd., 2004 at p. 27
preamble declares the resolve that the state will secure to the entire citizenry, which comprises of children also social, economic and political justice, liberty of thought, expression, belief, faith and worship along with equality of status and opportunity. The concept of ‘social justice’ enshrined in the preamble can be interpreted as a compendium of diverse principles essential for the orderly growth and overall development of personality, which is the foundation of the human rights jurisprudence for children.

**Fundamental Rights**

The judicial interpretation of part III of the Constitution paved way to the assurance of protection of rights of children. Article 14 guarantees equality before law and equal protection of law to all persons within the territory of India. Thus nobody including the children should be denied of equality of status, opportunity and protection. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, class, and place of birth or any of them. Article 15(3) which provides for protective discrimination in favour of children, says:

“Nothing in this Article shall prevent state from making any special provisions for women and children.”

Thus in explicit terms, Article 15(3) empowers the State to make special provisions for children as and when it is necessary for the well being of children.²

The right to life in Article 21 encompasses all sections of the society including women and children. And this right to live with human dignity is available to a child also. In *Vikram Deo Singh Tomar v. State of Bihar,*³ the Supreme Court has taken note of the pitiable conditions prevailing in care homes maintained by the State of Bihar for women and children and has directed the State to improve matters in these homes and provide at least the minimum living conditions ensuring human dignity. The court emphasised that India is a welfare

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³ AIR 1988 SC 1782
state and the protection in the Constitution of India lays special emphasis on the protection of the weaker sections of the society including women and children.  

Article 21A makes the State duty bound to provide free and compulsory education to all children below the age of fourteen years, incorporating the dictum delivered by the apex judiciary in Unnikrishnan v. State of A.P.

Article 23 speaks of the prohibition of all forms of traffic in human beings and beggar and other forms of forced labour. Article 24 specifically prohibits employment of children below the age of 14 years in any factory, mine or in any other hazardous employment. This provision is incorporated in the Constitution for the safety of the life of children. In Labourers Working on Salal Hydro Project v. State of J. & K., the court held that construction work is hazardous employment and children below 14 years cannot be employed in such type of work. Article 24 makes it obligatory for the state to protect the economic, social and humanitarian rights of millions of children working in factories and such other work places. But this article does not prohibit the employment of children in harmless job. It is quite interesting to note that the National Commission to Review the Working of the Constitution had suggested to add a new fundamental right in Article 24 A as follows:

“Every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation.”

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5 Inserted by the Constitution 86th Amendment, 2002
6 AIR 1993 SC 2178
7 AIR 1984 SC 177
8 In line with the constitutional provision many Acts provide for the prohibition of employment of children. For e.g., The Indian Factories Act, Mines Act,
   The Merchant Shipping Act, 1958,
   The Motor Transport Corporation Act, 1951,
   The Plantation labour Act, 1951,
   The Bidi and Cigar Workers (Condition of Employment) Act, 1966
In People’s Union for Democratic Rights v. Union of India,\(^{10}\) it was contented that ‘Employment of Children Act, 1938’ is not applicable in cases of employment of children in the construction work of Asiad Projects in Delhi. The apex judiciary, rejecting the contention, held that the construction work is hazardous employment and therefore no child below the age of 14 years can be employed in construction work.

**Directive Principles of State Policy**

This part of the Constitution, viz., part IV, also clearly provides for policies directed towards the welfare of the children, as this part has been designed to “strive to promote the welfare of the people by securing and protecting as effectively...\(^{11}\).”

Article 39(a), (e) and (f) specifically provide certain policies to be followed by the State for the welfare of the children. Article 39(f) provides that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 41 asserts the responsibility of the State to make effective provisions for securing the right to... education and to public assistance in cases of... sickness and disablement and in other cases of undeserved want, within the limits of its economic capacity and development.\(^{12}\)

Article 45 in explicit terms directs the State to endeavour to provide free and compulsory education for all children until they complete the age of 14 years, within a period of 10 years from the commencement of the constitution. This direction reflects the interest of the framers of the constitution as regards the education of the children as education is the foundation for a healthy and proper

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\(^{10}\) AIR 1982 SC 1943  
\(^{11}\) Article 38  
\(^{12}\) Emphasis supplied; This responsibility is acknowledged as subjected to financial capacity in Unnikrishnan v. State of A.P., AIR 1993 SC 2178
development of a child. The State responsibility to provide for just and humane conditions of work and maternity relief, also ultimately aims at the well being of children.

Article 46 stands for the promotion of the educational and economical interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes and for their protection from social injustice and all forms of exploitation.

Article 47 casts upon the State the duty to raise the level of nutrition and the standard of living and to improve public health.

The object of Directive Principles of State Policy explicit in all these provisions is ‘to embody the concept of welfare state’. Though Article 37 emphatically says in its first part that the rights contained in Part IV are not enforceable in any court nor their alleged breach by any law can be held to invalidate the law, the judicial wisdom has given more weight to the second portion of article 37, viz., “...the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.”

Writ Jurisdiction & Directive Principles

The Supreme Court of India in Mohini Jain v. State of Karnataka, has incorporated the directive principle in Article 45 into Article 21 so that writ jurisdiction can be invoked for the enforcement of the same. It was held that the ‘right to education’ being concomitant to the fundamental right to life, the State is

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13 In Unnikrishnan v. State of A.P.,(1993) 1 SCC 645 , the directive principles has been raised to the level of fundamental rights and it was held that the right to education flows directly from ‘right to life’.
14 Kesavananda Bharati v. State of Kerala, (1973) 4SCC 225, paras 134 and 139
15 Emphasis supplied; emphasising this part, the apex judiciary has held in a number of decisions that directive principles supplement fundamental rights to secure a welfare state. Thus the earlier view that Directive Principles are inferior to Fundamental Rights has almost been abandoned.
16 AIR 1992 SC 1858
under a constitutional mandate to provide educational institutions at all levels for the benefit of the children. Again in the famous case of *Unnikrishnan*, the apex court reiterated the same right; but limited the liability of state obligation in Article 45 incorporated by judicial interpretation into Article 21, towards every citizen until he completes the age of 14 years and beyond that stage, the state obligation to provide education is subject to the limits of the economic capacity and development of the state.

In yet another case, *M.C.Mehta v. State of Tamilnadu* the petition filed in the interest of child labourers sought the attention of the apex court towards gross violations of the fundamental rights of children employed in the Sivakasi area of Tamil Nadu and the judiciary has analysed the provisions contained in Articles 39(f) and 45 of the Constitution. The court thus, by extending the scope of fundamental rights, brought the directives also amenable to writ jurisdiction. Although the petition concerns only the child labour prevailing in the State of Tamilnadu, particularly in the Sivakasi area, the Hon’ble Court, taking into account, several factors, reports of the Government and reports of National Sample Survey Organisation, Planning Commission and other international bodies like UNICEF, was convinced that the problem of child labour has become an all India evil and is on the rise. The court held:

“…Child labour by now is an all-India evil though its acuteness differs from area to area. So without a concerted effort, both of the Central Government and various State Governments, this ignobility would not get wiped out. …So we would address ourselves as to how we can, and are required to, tackle the problem of child labour, solution of which is necessary to build a better India…. Poverty is the basic reason which compels parents of a child, despite their unwillingness, to get it employed…Feeling that the problem would be taken care of to some extent by insisting on compulsory education, the court is of the view that if employment of a child below that age of 14 is a constitutional indication in so far as work in any factory or mine or engagement in other hazardous work and if it has to be

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17 AIR 1993 SC 2178
18 AIR 1997 SC 699
seen that all children are given education till the age of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter a vocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualised by Article 39(f), it seems to us that the least we ought to do is see to the fulfilment of legislative intendment behind the enactment of Child Labour(Prohibition and Regulation) Act, 1986.”¹⁹

(ii) The National Policy for Children

For furthering the objects laid down in the Constitution and also keeping the needs of the children in mind, the Government of India came out in the year 1974 with a National Policy for Children aimed at the welfare of the children. The policy was formulated on the understanding that ‘the nation’s children are a supremely important asset. Their nurture and solitude are our responsibility; children’s programmes 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.’²⁰ 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.

Though the National Policy for Children 1974 became outdated by virtue of the international developments and the socio-economic and political changes occurred in the municipal sphere, a brief examination of the 1974 policy will enable any research work to understand how far the governmental attempts have succeeded in realising the policies emanated from the constitutional mandates and to what extent the pitfalls have been made good by the subsequent endeavours.

¹⁹ *Id.* at p. 705
²⁰ *Introduction to the National Policy for Children, 1974*
Goals of the 1974 Policy

The needs of children and our duties towards them have been expressed in our constitution. The resolution on a National Policy on education, which has been adopted by Parliament, gives direction to state policy on the educational needs of the children. We are also party to the UN Declaration of the right of the child. The goals set out in these documents can reasonably be achieved by judicious and efficient use of the available national resources.

Measures to be Adopted

The State is responsible to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. The following measures are particularly indented to be adopted towards the attainment of these objectives:

i. All children shall be covered by a comprehensive health programme.

ii. Programmes shall be implemented to provide nutrition services with the object of removing deficiencies in the diet of children.

iii. Programmes will be undertaken for the general improvement of the health and for the care, nutrition and education of expectant and nursing mothers.

iv. The State shall take steps to provide free and compulsory education for all children up to the age of 14 for which a time-bound programme will be drawn up consistent with the availability of resources. Special efforts will be made to reduce the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the weaker
sections of the society. The programme of informal education for pre-
school children from such section will also be taken up.

v. Children who are not able to take full advantage of formal education
shall be provided with other forms of education suited to their
requirements.

vi. Physical education, games, sports and other types of recreational as
well as cultural and scientific activities shall be promoted in schools,
community centres and such other institutions.

vii. To ensure equality of opportunity, special assistance shall be provided
to all children belonging to the weaker sections of the society, such as
children belonging to the Scheduled Caste and Scheduled Tribes and
those belonging to the economically weaker sections both in urban and
rural areas.

viii. Children who are socially handicapped, who have become delinquent
or have been forced to take to begging or are otherwise in distress,
shall be provided with facilities for education, training and
rehabilitation and will be helped to become useful citizens.

ix. Children shall be protected against neglect, cruelty and exploitation.

x. No child under 14 years shall be permitted to be engaged in any
hazardous occupation or be made to undertake heavy work.

xi. Facilities shall be provided for special treatment, education,
rehabilitation and care of children who are physically handicapped,
emotionally disturbed or mentally retarded.

xii. Children shall be given priority for protection and relief in times of
distress or natural calamity.
xiii. Special programmes shall be formulated to spot, encourage and assist gifted children, particularly those belonging to the weaker sections of society.

xiv. Existing laws should be amended so that in all legal disputes, whether between parents or institutions the interests of children are given paramount consideration.

xv. In organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighbourhood and community environment.

In formulating programmes in different sectors, priority shall be given to programmes relating to:

a. Preventive and promotive aspects of child health;

b. Nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers;

c. Maintenance, education and training of orphan and destitute children;

d. Crèches and other facilities for the care of children of working or ailing mothers; and

e. Care, education, training and rehabilitation of handicapped children

f. The policy also aims at establishing National Children Board and State Level Boards for focussing attention to the rising needs of children relating to health, nutrition, education and other welfare services and also to ensure at different levels continuous planning, review and coordination of all the essential services. Voluntary organisations working in the field of education, health, recreation and social welfare services will be given the opportunity to develop on their own or with State assistance.
A thorough verification of the contents of the 1974 Policy shows that these objectives are relevant even now. But the multifarious developments and changes occurred after 1974 made it inevitable to restructure the governmental policies, which in turn gave birth to the Draft National Policy and Charter for Children 2001 and the later National Policy for Children 2003.


Right to Survival

Article 1 of the 2001 Charter makes the State and the community duty bound to undertake all appropriate measures to address the problems of infanticide and foeticide, especially of the female child and all other emerging manifestations which deprive the girl child of her right to survival.

Right to Health and nutrition

Articles 2 and 3 provide for right to health and nutrition respectively. Accordingly the State shall take measures to ensure that all children enjoy the highest attainable standard of health, and provide for preventive and curative facilities at all levels especially immunisation and prevention of micronutrient deficiencies for all children. Primary health facilities, specialised care and treatment for all children of families below the poverty line, adequate prenatal and postnatal care for mothers, immunization against preventable diseases, measures to ensure mental health of children, protective measures from all practices that are likely to harm the child’s physical and mental health etc. are given predominant consideration in the policy and charter. The responsibility to provide all children from families below the poverty line with adequate supplementary nutrition is also cast upon the State. The State shall take steps to provide facilities for environmental sanitation and hygiene.
Right to a Standard of Living

The State recognizes in Article 4 that every child is having the right to a standard of living that fosters full development of the child’s faculties. To ensure this, the State shall in partnership with the community, prepare a social security policy for children, especially for abandoned children and street children and shall provide them with infrastructural and material support by way of shelter, education, nutrition and recreation.

Right to Play and Leisure

The right of children to play and leisure is recognised in Article 5 and it is the duty of the State to provide for educational facilities and services for children of all ages and social groups.

Right to Early Childhood Care

Article 6 obliges the State to provide early childhood care for all children and encourage programmes which will stimulate and develop their physical and cognitive capacities and aim at providing a childcare centre in every village where infants and children of working mothers can be adequately cared for. The State will make special efforts to provide these facilities to children from Scheduled Caste and Scheduled Tribes and other marginalized sections of the society.

Right to Education

The right to elementary education for all children is recognised in Article 7. It shall be provided free of cost and special incentives should be provided to ensure that children from disadvantaged social groups are enrolled and retained in school and participate in schooling. At the secondary level, the State shall provide access to education for all and provide supportive facilities for children from the disadvantaged groups. The state shall, in partnership with the community, ensure that all educational institutions function efficiently and are able to reach universal
enrolment, universal retention, universal participation and universal achievement. The right of all children to education in their mother tongue has also been recognised. The State shall formulate special programmes to spot, identify, encourage and assist the gifted children for their development in the field of their excellence.

**Right to be Protected from Economic Exploitation**

The duty of the State to provide protection to children from economic exploitation and from performing tasks that are hazardous to their well-being is also recognised. The state shall also ensure that there is appropriate regulation of conditions of work in occupations and processes where children perform work of a non-hazardous nature and that the rights of the children are protected. The ideal goal is that the State shall move towards a total ban of all forms of child labour.

**Right to Protection**

The right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment has been recognised in the Charter. The State shall take legal action against those committing such violations against children even if they were legal guardians of such children. The State shall in partnership with the community, set up mechanisms for identification, reporting, referral, investigation and follow up of such acts, while respecting the dignity and privacy of the child. The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or armed conflicts. The State, in partnership with the community, shall ensure that such children are rescued and immediately placed under appropriate care and

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21 Article 8
protection. The State and community shall also ensure protection of children during the occurrence of natural calamities.\textsuperscript{22}

**Right to Protection of the Girl Child**

The State shall ensure that offences against women including child marriage, forced prostitution and trafficking are abolished. The community is also responsible in this regard. The State shall, in partnership with the community, undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.\textsuperscript{23}

**Right of Adolescents to Education and Skill Development**

The responsibility of the State and the community to take all steps to provide the necessary education and skill to adolescent children so as to equip them to become economically productive citizens. Special programmes shall be undertaken to improve the health and nutritional status of the adolescent girl.\textsuperscript{24}

**Right to Equality**

In line with the constitutional mandate of equality, the 2001 Charter, also recognises that all children are treated equally without discrimination on grounds of the child’s or its parents’ or legal guardian’s race, colour, caste, sex, language, religion, political or other opinion, national, ethnic or social origin, disability, birth, political status, or any other consideration.\textsuperscript{25}

\textsuperscript{22} See, articles 9 & 10  
\textsuperscript{23} Article 11  
\textsuperscript{24} Article 12  
\textsuperscript{25} Article 13
Right to Life and Liberty, Name and Nationality

Article 14 of the charter recognises the right of every child to life, liberty, and a name and to acquire a nationality.

Right to Freedom of Expression

Article 15 says that every child shall be given with every opportunity for all round development of their personality, including creativity of expression.

Right to Seek and Receive Information

In the light of the international convention, the constitutional right is specifically intended to be addressed to children also. Every child shall have the freedom to seek and receive information and ideas. The State and the community shall provide opportunities for the child to access information that will contribute to the child’s development. The State and the community shall undertake special measures to ensure that the linguistic needs of children are taken care of, and encourage the production and dissemination of child friendly information and material in various forms. The State and the community shall be responsible for formulating guidelines for the mass media in order to ensure that children are protected from material injurious to their well-being.26

Freedom of Association and Peaceful Assembly

Article 17 recognises that all children enjoy freedom of association and peaceful assembly, subject to reasonable restrictions and in conformity with social and family values.

26 Article 16
Right to a Family & Responsibilities of the Parents

The charter acknowledges the challenges and problems of the time. In case of separation of children from their families, the State shall ensure that priority is given to reuniting the child with the parents. In case, where the State perceives adverse impact of such a reunion, the State shall make alternative arrangements immediately, keeping in mind the best interests and their views of the child. All children have a right to maintain contact with their families, even when they are within the custody of the State for various reasons.\(^{27}\) The State shall undertake measures to ensure that children without families are either placed for adoption, preferably intra-country adoption or foster care, or any other family substitute services. All children shall have the right to meet their parents and other family members who may be in custody.\(^{28}\)

The State has also specifically recognised the common responsibilities of both the parents in rearing the children.\(^{29}\)

Rights of Children with Disabilities

It is recognised by the State that the community along with the State should acknowledge that the children with disabilities have a right to lead a full life with dignity and respect. All measures should be undertaken to ensure that children with disabilities are encouraged to be integrated into the mainstream society and actively participate in all walks of life.\(^{30}\) Facilities shall be provided by the State and the community for their education, training, health care, rehabilitation and recreation in a manner that will contribute to their overall growth and development. State and community shall launch preventive programmes against disabilities and early detection of disabilities so as to ensure that the families with disabled children receive adequate support and assistance in

\(^{27}\) Re O & Arr (Children) (non-accidental injury) (Re B (Children) (non-accidental injury) [2003] 2 All ER 305

\(^{28}\) Article 18

\(^{29}\) Article 19

\(^{30}\) Article 21
bringing up their children. The state shall encourage research and development in the field of prevention, treatment and rehabilitation of disabilities.

**Rights of Children from Marginalized and Disadvantaged Communities**

The rights of children belong to the marginalized and disadvantaged communities to preserve their identity shall be respected by the State and community. The State and community shall also encourage them to adopt practices that promote the best interest of children in their communities.31

**Rights of Child Victims**

The responsibility to draw up plans for the identification and rehabilitation of child victims is bestowed upon the State, in partnership with the community. The State should make it sure that they are able to recover physically, socially and psychologically and reintegrate into society.32

**Right to Child-Friendly Procedures**

All matters relating to children i.e., judicial, administrative, educational or social should be child-friendly. The procedures to deal with juvenile in conflict with law and for children in need of special care and protection should also be child friendly.33

**The National Charter for Children, 2003**

Adopting the principles in the Draft National Policy and Charter, 2001, on 9th February 2004, the Government of India has promulgated the National Charter for Children, 2003.34 This is to reiterate the commitment of the government to the

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31 Articles 22 & 23  
32 Article 24  
33 Article 25  
34 Published in the Extraordinary Gazette of India, Part-I, Section-I, No.F.6-15/98-CW
cause of the children in order to see that no child remains hungry, illiterate or sick. The joint responsibility of the State, society, community and family, which must be viewed in the context of intrinsic and attendant duties towards children and inculcating in children a sound sense of values directed towards preserving and strengthening the family, society and the nation, has been recognised by the Government in the 2003 Charter.

**Survival, Life and Liberty**

'\The right to survival’ included in the draft policy and charter of 2001 is included in the 2003 Charter.\textsuperscript{35} The State and the community shall undertake all possible measures to ensure and protect the survival, life and liberty of all children. In particular, the State and community will undertake all appropriate measures to address the problems of infanticide and foeticide, especially of female child and all other emerging manifestations that deprive the girl child of her right to survive with dignity.

**Promoting High Standards of Health and Nutrition**

Under this head the following responsibilities of the State are highlighted:

i. ensure that all children enjoy the highest attainable standards of health

ii. provide for preventive and curative facilities at all levels especially immunisation and prevention of micronutrient deficiencies for all children

iii. take measures to cover, under primary health facilities and specialised care and treatment, all children of families below the poverty line

iv. take measures to provide adequate pre-natal and post-natal care for mothers along with immunization against preventable diseases

\textsuperscript{35} Article 1.a. & b
v. undertake measures to provide for a national plan that will ensure that the mental health of all children is protected

vi. take steps to ensure protection of children from all practices that are likely to harm the child’s mental and physical health

vii. take steps to provide all children from families below the poverty line with adequate supplementary nutrition and undertake adequate measures for ensuring access to safe drinking water and environmental sanitation and hygiene.36

Assuring Basic Minimum Needs and Security

The State recognizes that the basic minimum needs of every child must be met, that foster full development of the child’s faculties. In order to ensure this, the State shall, in partnership with the community, provide social security for children, especially for abandoned children and street children. The State and community shall also try to remove the fundamental causes which result in abandoned children and children living on streets, and provide infrastructural and material support by way of shelter, education, nutrition and recreation.37

Early Childhood Care for Survival, Growth and Development

The duty to provide early childhood care for all children and encourage programmes, which will stimulate and develop their physical and cognitive capacities, is cast upon the State. Childcare centres shall be established in every village, where infants and children of workingwomen can be adequately cared for. In this regard, special attention shall be given to children from SCs/Sts and marginalized sections of society. In all these activities the partnership of the society has been emphasised38.

36 Articles 2.a. to 2.e. & 3
37 Articles 4.a. to 4.c.
38 Articles 6.a. to 6.c.
Free and Compulsory Primary Education

In this regard, the State shall discharge the following functions:

i. right to have access to free and compulsory education for all children shall be recognised

ii. education at the elementary level shall be provided free of cost and special incentives should be provided free of cost

iii. special incentives should be provided to ensure that children from disadvantaged social groups are enrolled, retained and participate in schooling

iv. at the secondary level access to education for all shall be provided

v. at the secondary level, supportive facilities shall be provided for those from the disadvantaged groups

vi. in partnership with the community, the efficient functioning of educational institutions shall be ensured

vii. the attainment of ‘universal enrolment’, ‘universal retention’, ‘universal participation’ and ‘universal achievement’ by the educational institutions shall be ensured

viii. the right of the child to be educated in its mother-tongue shall be recognised

ix. it should be ensured that the education shall be child-oriented and meaningful

x. appropriate measures shall be taken to ensure that education is sensitive to the healthy development of the girl child and to children of varied cultural backgrounds

xi. it should be ensure that school discipline and matters relating thereto do not result in physical, mental, psychological harm or trauma to the child
xii. special programmes to spot, identify, encourage and assist the gifted children shall be formulated for their development in the field of their excellence\(^{39}\)

**Protection from Economic Exploitation and All Forms of Abuse**

The State shall provide protection to children from economic exploitation and from performing tasks that are hazardous to their well-being. To attain this purpose the State shall pay attention in the following matters:

i. appropriate regulation of conditions of work shall be ensured in occupations and processes where children perform work of a non-hazardous nature so as to protect their rights

ii. measures shall be taken for a total ban of all forms of child labour

iii. the right of children to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment shall be assured

iv. legal actions shall be taken against those committing such violations against children even if they be legal guardians of such children

v. in partnership with the community, mechanisms for identification, reporting, referral, investigation and follow-up of such acts shall be set up (the dignity and privacy of the child shall be respected)

vi. steps to draw up plans for the identification, care, protection, counselling and rehabilitation of child victims shall be taken and it should be ensured that they are able to recover, physically, socially and psychologically and reintegrate into society

\(^{39}\) Articles 7.a. to 7.g.
vii. strict measures shall be taken to ensure that children are not used in the conduct of any illegal activity, namely, trafficking or narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. Children involved in such activities shall be rescued and immediately placed under appropriate care and protection.

viii. protection of children in distress shall be ensured for their welfare and all round development.

ix. protection of children during the occurrence of natural calamities shall be ensured in their best interest.  

Equality, Freedom of Expression, Freedom to seek and Receive Information, freedom of Association and Peaceful Assembly

The State shall ensure equality to all children irrespective of any considerations race, colour, caste, sex, language, etc. All children shall be given every opportunity for all round development of their personality, including expression of creativity.

Every child shall have the freedom to seek and receive information and ideas that will contribute to the child’s development. The State and the community shall undertake special measures to ensure that the linguistic needs of children are taken care of and encourage the production and dissemination of child friendly information and material in various forms. The State and the community shall also be responsible for formulating guidelines for the mass media in order to ensure that children are protected from material injuries to their well-being.

40 Articles 8.a. to 10.c.
41 Articles 13 & 14
42 Articles 15.a. to 15.c.
The right of all children to enjoy the freedom of association and peaceful assembly, subject to reasonable restrictions and in conformity with social and family values has also been recognised.43

**Strengthening Family**

The right of every child to have a family has been recognised by the government.44 And, the common responsibilities of both the parents in rearing their children has also been recognised by the State.45

In case of separation, the State should come forward to effect re-unification; but the State shall make alternate arrangements for the best interests of the child, if it perceives adverse impact of such re-unification. All children have a right to maintain contact with their families, even when they are within the custody of the State for various reasons.46 Provisions for adoption especially for inter country adoption are also included, just as in the Draft Charter of 2001.

**Rights of Special Category Children**

The assertion of rights of disabled children, children from marginalized and disadvantaged communities as recognised in the 2001 Draft Charter has been incorporated in the 2003 Charter too.47

The detailed description of the governmental policy highlights the need to embody the same into a statutory framework so that the objects and wishes can be realised. The provisions in the available statutes provide for an effective mechanism to a certain extent, which can be fulfilled keeping in mind the policy

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43 Article 16
44 Article 17.a.
45 Article 18
46 Article 17.b. : The British practice is just contrary, where the right of the child to maintain contact with its family while in state custody is not recognised, many a time.
47 Articles 19.a. to 21
documents; but there remain many areas, which need particular legislative intervention.

(iii) Legislative Framework

The Code of Civil Procedure, 1908

Order XXXII and Order XXXII-A deal with certain proceedings in connection with children. O.XXXII Rule 1 mandates that every suit by a minor shall be instituted by the next friend. Where the defendant is a minor, the court shall appoint a guardian.48 The order for appointment of guardian under this Rule shall be made upon notice to any guardian appointed by any competent authority and if no such guardian, upon notice to the father (where there is no father, upon notice to the mother and where there is no mother also, to other natural guardian or to the person in whose care the minor is) and after hearing any objection.49 Rule 3-A guards the rights of the minor against prejudices. A decree against the minor shall be set aside for the reason that the next friend or guardian for the suit had an interest upon the subject matter of the suit and due to the same; prejudice has been caused to the interests of the minor.50

While appointing a next friend or guardian the court must be particular to see that the interest of such person is not adverse to that of the minor.51

The concern of the legislature towards the sanctity of the family and the right to privacy of the child is also expressed in the Code of Civil Procedure. Along with certain other proceedings, the proceedings in connection with the question of legitimacy, guardianship or the custody of a minor, maintenance, validity or effect of adoption, any other matter concerning the family, shall be held in camera.52 And, it is the duty of the court to arrive at a peaceful settlement

48 O.XXXII, Rule 3
49 O.XXXII, Rule 3(4)
50 O.XXXII, Rule 3-A (1)
51 O.XXXII, Rule 4(1)
52 O.XXXII-A, Rule 1 & Rule 2
in respect of such matters. For this purpose, the court shall secure the service of any person, including a person professionally engaged in promoting the welfare of the family.

**Maintenance of Children**

Section 125 of the Code of Criminal Procedure provides:

“(1) If any person having sufficient means neglects or refuses to maintain-

(a) …….., or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) ……..,

a magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child,….., at such monthly rate not exceeding five hundred rupees in the whole, as the magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

………………..”.

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53 O.XXXII-A, Rule 3
54 O.XXXII-A, Rule 4
This section is applicable to all irrespective of their religion, and provides speedy remedy against starvation and destitution. Even after the passing of Muslim Women’s (Protection of Rights on Divorce) Act, 1986, which allows a Muslim woman to invoke s.125 of Cr.P.C. only if the husband consents, the right of the child to claim maintenance under section 125 Cr.P.C. is not taken away.55

A ‘neglect or refusal’ may be by words or by conduct. It may be express or implied. 56 Actually, neglect or refusal may amount to something more than mere failure or omission. But where there is a duty to maintain, as in the case of a child who has no will or volition of its own, mere failure or omission may amount to ‘neglect or refusal’.57

In 1970, prior to the 1973 amendment to Cr.P.C., in Nanak Chand v. Chandra Kishore,58, the Supreme Court had pointed out that emphasis is always on the inability of the child to maintain himself (the judiciary was highlighting the spirit behind as prior to the amendment there was no specific mention about major children unable to maintain themselves).

Again, the basis of an application for maintenance of a child is the paternity of the child irrespective of its legitimacy or illegitimacy. But if the paternity is not established, the child is not entitled to maintenance. And if the custody of the child is withheld from his father wrongfully, who is the legal guardian, he cannot be called upon to pay for his maintenance.

**Maintenance of Children during lis pendence**

Under the Marriage Laws (Amendment) Act, 2001(Act 49 of 2001), section 26 of the Hindu Marriage Act, 1955 was amended. The amended section 26 provides that the application with respect to maintenance and education of the

56 Rajiv Bhatia v. Govt. of NCT of Delhi & Ors., (199) 8 S CC 525 “... behaviour of the child herself made clear the neglect...”
57 Chand Begum v. Hyderbaig, 1972 Cri.L.J. 1270
58 AIR 1970 SC 446
minor children pending litigation for obtaining such decree, shall as far as possible, be disposed of within sixty days from the date of service of notice on the respondent. The Code of Criminal Procedure (Amendment) Act, 2001 (No.50 of 2001) amended section 125 to provide that the court can order interim maintenance (monthly allowance) within sixty days. Apart from these, there is no provision to monitor the welfare of the children during *lis pendence*, and hardly any effort is made by the Family Courts to ascertain periodically the living conditions of the children back home, their maintenance, health, psychological needs, education etc. Hence the Family Courts Act, 1984 needs to be amended to take care the following:

a. the claims for maintenance of the parent petitioner and the minor child should not be clubbed together and must be dealt with separately by the Family Courts. This will ensure that the minor child starts getting its legally entitled maintenance quickly from the natural guardian irrespective of the procedural status of the litigation between the parents

b. the Family Courts should be empowered to entrust the maintenance of the child to the State Child Welfare Board

c. the counselling procedure laid down under the Family Courts(Kerala) Rules, 1989 needs to be made more child friendly. There should be periodical visits by the Counsellor to the children at their home or..and the counselling should be conducted for children by a Counsellor who has specialized in child psychology and child welfare to understand their emotional, mental, social and economic needs and recommend adequate reliefs to the Family Courts. In the case of school going children the Counsellor should visit the school and ascertain the academic performance of the child and his various requirements and report to the court for appropriate orders.

d. The assistance of the State Child Welfare board should be made available to the Family Courts.
Concern for Children under Criminal law

The Indian Penal Code, 1860 provides that nothing is an offence done by a child under 7 years of age.\textsuperscript{59} Where the offence is done by a child above 7 years and under 12 years, who has not attained the sufficient maturity of understanding to judge the nature and consequences of his conduct, he will not be liable for the same.\textsuperscript{60}

Offences against the Child under the Indian Penal Code, 1860

Even the child \textit{en re se mere} is recognised under the penal law. Whoever voluntarily causes a woman with child to miscarry shall be punished.\textsuperscript{61}

And, the responsibility of the parents to take care of the child also is made a question of supervision under the penal justice system. Accordingly, whoever being the father or mother of a child under the age of 12 years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extent to 7 years, or with fine, or with both.\textsuperscript{62}

Kidnapping from lawful guardianship is made punishable by virtue of section 361.\textsuperscript{63} Accordingly, whoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, out of the keeping of the lawful guardian of such minor, is said to kidnap such minor from the lawful guardianship. The law extents maximum protection and assures greater care towards children and so the judiciary is keen to widely interpret this provision. Thus it was held that the word ‘takes’ does not necessarily mean taking by force nor it is confined only to the use of force. The word simply means, “to cause to go, to escort or to get into possession”. The term ‘entices’ involves the idea of

\textsuperscript{59} Section 82  
\textsuperscript{60} Section 83; See also, \textit{Hiralal mallik v. State}, 1977 Cri.L.J. 1921 (SC)  
\textsuperscript{61} sections 312 to 316 and 318  
\textsuperscript{62} section 317  
\textsuperscript{63} read with sections 359 and 360
inducement or allurement by giving rise to hope or desire in another person. The very object of this section is to protect the minor children from the influence of being seduced to illicit purposes. Again, under section 363A, kidnapping or maiming a minor for purposes of begging is also an offence.

Section 366A says that whoever, by any means whatsoever, induces any minor girl under the age of 18 years, to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person, shall be punished. Again, importation of any girl under 21 years of age from any country outside India with the intention or knowledge that she will be forced or seduced to illicit intercourse with another person is also made an offence. Similarly, selling minor for prostitution is an offence under section 372.

The sixth description of section 375 provides that the sexual intercourse with a woman under 16 years of age will make a man liable for the offence of ‘rape’, irrespective of the question whether she had given consent or not.

In yet another provision, the abetment of suicide of child is made punishable under the Penal Code.

Presumption of Legitimacy

The law does not like leaving any child ‘bastard’. Simply crystallising this mores of the society and the legal system, section 112 of the Indian Evidence Act,

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64 See, Thakorlal D. Vadgama v. State, AIR 1973 SC 2313
65 See, State v. Raja Ram, AIR 1973 SC 819
66 ‘Begging’ for this purpose means-
   (i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;
   (ii) entering on any private premises for the purposes of soliciting or receiving alms;
   (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;
   (iv) using a minor as an exhibit for the purpose of soliciting or receiving alms.
67 Section 366B
68 See section 373 also
69 section 305
1872 says that the fact that any person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive proof of that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when it could have been begotten.  

Section 16 of the Hindu Marriage Act, confers legitimacy on children born out of a void marriage. The section has also been held valid by the judiciary vis-à-vis Article 14, as it treats all legitimate children similarly circumstanced as forming one class for conferment of legitimacy.

Child Marriage (Prohibition) Act, 2006

This Act was enacted to prohibit the solemnisation of child marriage repealing the Child Marriage Restraint Act. For the purposes of this Act, a male who has not completed 21 years of age and a female who has not completed 18 years of age will be treated as a ‘child’ and a marriage to which either of the contracting parties is a child will be treated as a ‘child marriage’.

Under section 3 a child marriage will be voidable, provided the party can apply for a decree of nullity. Provision for maintenance and residence to female contracting party to child marriages, custody and maintenance of children born out of child marriages, application of the principle of legitimacy of children are the

72 section 2(a)
73 section 2(b)
74 section 4. Provision for maintenance and residence to female contracting party to child marriage. - (1) While granting a decree under section 3, the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.
new features of the Act. Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, shall be punishable with simple imprisonment which may extent to three months and shall also be liable to fine. The adult marrying the minor is also made punishable.\(^75\)

**The Immoral Traffic (Prevention) Act, 1986**

This Act came into force in pursuance of the International Convention signed at New York on the 9\(^{th}\) day of May, 1950, for the prevention of Immoral Traffic\(^76\). The late amendments to this Act are the Suppression of Immoral Traffic in Women and Girls (Amending) Act, 1978 (46 of 1978) w.e.f. 2/10/1979 and the Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986 (44 of 1986) w.e.f. 26/1/1987

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(2) The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum.

(4) In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

section 5. Custody and maintenance of children of child marriages.- (1) Where there are children born of the child marriage, the district court shall make an appropriate order for the custody of such children.

(2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper.

(4) The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

section 6. Legitimacy of children born of child marriages.- Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

section 9. Punishment for male adult marrying a child.- Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

\(^75\) Bill No. 58 of 1954

\(^76\)
If the commission of any offence under this Act is in respect a child special punishment is provided.\textsuperscript{77} If a child is found in a brothel, or on medical examination, detected to have been sexually abused, the presumption is that the child or the minor has been detained for purposes of prostitution or has been sexually exploited.

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

This Act was enacted by Parliament with a view to the protection and promotion of breast-feeding and ensuring the proper use of infants’ foods. The international recognition that the health of the children is the greatest asset of the State is recognised by the Government. Sections 3 and 4 of the Act provides for the prohibitions in respect of infant milk. Accordingly, no person shall:

i. advertise or take part in the publication of any advertisement, for the distribution, sale or supply of infant milk substitutes or feeding bottles;

ii. give an impression or create a belief in any manner that feeding of infant milk substitutes is equivalent to, or better than, mother’s milk;

iii. take part in the promotion of use or sale of infant milk substitutes of feeding bottles or infant foods otherwise than in accordance with the provisions of this Act;

iv. supply or distribute samples of infant milk substitutes or feeding bottles or gifts of utensils or other articles;

v. contact any pregnant woman or the mother of an infant.

The supplier or distribut or of the infant milk substitute is bound to give the information that mother’s milk is best for the baby, infant milk substitutes shall be used only on the advice of a health worker, it is not the sole source of nourishment

\textsuperscript{77} sections 5(1)(i) & (ii)
of an infant, etc. The instructions for its appropriate preparation and warning against the health hazards of its inappropriate preparation also shall be provided.\(^{78}\)

It is provided by the Act that every educational or other material dealing with pre-natal or post-natal care or with the feeding of an infant shall include the information relating to:

a. the benefits and superiority of breast feeding

b. the preparation for and the continuance of breast feeding

c. the harmful effects on breast feeding due to the partial adoption of bottle feeding

d. the difficulties in reverting to breast feeding of infants after a period of feeding by infant milk substitute

e. the financial and social implications in making use of infants milk substitutes and feeding bottles

f. the health hazards of improper use of infant milk substitutes and feeding bottles

g. the health hazards of improper use of infant milk substitutes and feeding bottles.

The Juvenile Justice (Care and Protection of Children) Act, 2000

The recognition of the State that every child needs special care and protection makes it obligatory on the part of it to provide the same to those who are denied of such basic rights. In our country, a major chunk of children do not get any fundamental facilities for the development towards full potential. Apart from the poor economic conditions of the parents, poor nourishment, situations of mal adjustment, delinquency, neglect, orphancy, broken families, etc. add to the

\(^{78}\) section 6
miseries. The international mandate by the 1989 convention and other international resolutions in line with the same and the constitutional requirements prompted the government to re-enact the existing law relating to juveniles and accordingly the new Act of 2000 came into force repealing the earlier Juvenile Justice Act, 1986.

The Act seeks to cover two groups of children, *viz.*, ‘juvenile in conflict with law’ and ‘children in need of care and protection’.

The Act envisages the constitution of ‘Juvenile Justice Boards’ or ‘Child Welfare Committees’ for every district or a group of district to exercise powers and discharge duties as conferred by the Act in relation to the care and protection of juveniles.

**Commission for Protection of Child Rights Act, 2005**

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 as a statutory body under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006), an Act of Parliament (December 2005). It was set up to protect, promote and defend child rights in the country.

**Right of Children to Free and Compulsory Education Act, 2009**

The Right of children to Free and Compulsory Education Act has come into force from April 1, 2010. This is a historic day for the people of India as from this day the right to education will be accorded the same legal status as the right to life as provided by Article 21A of the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his neighbourhood.

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79 See for detailed discussion, Chapter VII
80 See for detailed discussion, Chapters IV, V & VIII
81 See for detailed discussion, chapter XI
82 See for detailed discussion, chapter III
Any cost that prevents a child from accessing school will be borne by the state which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling. No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test.

All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated at par with all the other children in the school.

(iii) Enforcement of International Principles through Indian courts

Before the adoption of the Indian Constitution the relationship between international covenants and the municipal law was maintained as per the British Practice. The ratification of a convention signifies that India has given its consent to the international community to be bound by the provisions of the said treaties. But India is yet to incorporate them, except the step taken by the enactment of the Juvenile Justice (Care and Protection) Act, 2000.

By virtue of Article 253 of the Constitution of India, the Parliament has exclusive power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country, or countries or any decision made at any international conference, association or other body. Article 51 issues a directive to the State to endeavour to foster respect for international law and treaty obligations. But the enforcement of a right recognised in an international convention or treaty or a declaration through the municipal courts raises certain legal issues.

83 ICCPR & ICESCR were ratified on 27th March, 1979; Convention on the Rights of Child (1989) was acceded to by the Government of India on 11 December 1992.
84 Article 51(c)
In the landmark decision of *Visakha v. State of Rajasthan*\(^85\), it was held:

“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution … Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and contents thereof, to promote the object of the constitutional guarantee… regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.”

It appears that using Article 51, the apex judiciary has been able to input into Part III of the Constitution the vast number of rights flowing from various international declarations, charters and conventions ratified by India. In *S.R. Bommai*\(^86\) also the Supreme Court of India has clearly stated that the provisions of an international covenant which elucidate and go to effectuate the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence enforceable as such. In *People’s Union for Civil Liberties v. Union of India*\(^87\) also the Supreme Court applied this tool of interpretation to enforce a right recognized by the international covenant through Part III of our Constitution.

Again, it is significant to note that article 51 specifically mentions separately, ‘international law’ and ‘treaty obligations’. No explanation is found in

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85. (1997) 6 SCC 241
86. *S.R. Bommai v. Union of India* (1994) 3 SCC 1
the Constituent Assembly debates either as to intent of article 51 or the meaning and scope of the words ‘international law’ and treaty obligations’. The juristic opinion that ‘international law’ may connote ‘customary international law’ and ‘treaty obligations’ may stand for obligations arising out of international treaties may be treated supplementary to the interpretation of article 51.\(^\text{88}\)

It is also pertinent to note that article 51 is in Part IV of the Constitution of India, which means that it forms part of the directives to the state policy only. But article 37 which in its first part provides that the provisions contained in Part IV are non-justiciable adds in its latter part in unmistakable terms that these principles are “nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws”.

Before the adoption of the constitution, the British practice was that customary rules of international law formed part of the law of the land, subject to certain conditions and exceptions. As regards the treaty obligations arising out of international treaties also India followed more or less the British practice of specific adoption theory.\(^\text{89}\) In *A.D.M. Jabalpur v. Shukla*\(^\text{90}\), while examining the question, whether UDHR forms part of Indian municipal law, by majority, the apex court held that it was not part of the Indian municipal law. In *Jolly George Varghese v. Bank of Cochin*\(^\text{91}\), the Supreme court held that in case of conflict between a provision of an international treaty to which India is a party and a provision of a State statute, it is the latter which shall prevail, if the international treaty in question has neither been specifically adopted in the municipal law nor has undergone transformation. Krishna Iyer,J., observed:

> “…International law per se or *proprio vigore* has not the force of law or authority of civil law till under its inspirational act, actual


\(^{89}\) International law can become part of the municipal law only if it has been specifically adopted or incorporated.

\(^{90}\) AIR 1976 SC 1207

\(^{91}\) AIR 1980 SC 470
legislation is undertaken…In short, the basic rights enshrined in the international covenants…may at best inform judicial institutions and inspire legislative action with member states, but apart from such deep reverence, remedial action at the instance of an aggrieved individual is beyond the area of judicial authority.”

Thus if there is no conflict between municipal law and a provision of an international treaty or where two constructions of municipal law are possible, Indian courts can give effect to the provision of international treaty by giving harmonious construction.

Hence the legal implication is that the absolute enforceability depend upon the question of availability of a municipal statute which in turn points to the State responsibility to frame statutes incorporating international principles which we have already ratified. In the absence of a fundamental right or a legal right, the mere governmental adhesion to an international principle will not provide *locus standi* to an aggrieved person.

**Concluding Notes**

Even with the existence of great governmental concern and recognition of rights of the child, a large number of children in India live much below the standards set by the Constitution as well as the national and international legal principles. It is again, noteworthy that the judiciary is also free to enforce the international rights in favour of Indian children even if they are not specifically incorporated, provided they are not contrary to the existing legal norms. Still, a greater majority of the Indian children suffer an array of threats to their development, well-being and survival due to poverty, diseases, orphans, neglect, famine *etc.* Primary education for all still remains as a bare dream. There are thousands of child-labourers working in various sectors including industrial, 

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92 Ibid. at p.474
93 See also, *Githa Hariharan v. RBI*, (1999) 2 SCC 228 at para 14
94 UNESCO Report 2000 shows, over 72 million children in the age group of 5 to 14 ages in India are deprived of basic education.
manufacturing and household activities. According to the National Family Health Survey, 2000 one-third of the world’s children who suffer malnutrition belong to India. The actual estimate of street children nation-wide exposed to violence and abuse is not available due to many reasons. A shocking number of children are trafficked and utilised for prostitution.

This deplorable state of affairs reminds the need of further governmental and legislative interventions.