

Provisions under National Laws for the Protection of Children

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Abstract

Internationally as well as nationally, the child has been subjected to special laws and legal protection by reason of his tender age, weak physique and immature mind and understanding. In India various Constitutional and legislative measures were undertaken. All such legislations are premised on the notion to provide for the rehabilitation and protection of the socially and economically abused and neglected children. Rights of the child were for the first time recognized in the Constitution of India and the manifestation of the same connote incorporation of several articles which provide for their literacy, livelihood, non discrimination in educational spheres, development of childhood, prohibition of employment in factories, mines and hazardous employment, compulsory and free education, etc. Article 15 (3) is premised on the notion that children require special treatment on account of their physical and mental immaturity. Article 21 provides for the protection of life and personal liberty of the people including children. The right to life has been interpreted not merely to physical existence but it includes within its ambit the right to live with human dignity. The present paper discusses the issues regarding the rights of the children.

Key Words: *Constitution, Legislative measures, Children, child abuse, Rights of the child.*

Introduction

Traditionally, in India the responsibility for care and protection of children lies with the family. In the patriarchal society, children were the recipient of welfare measures. While exercising full control over the children, it was never realized that children are also individuals with their own rights. In most of the sections of Indian society, traditionally as well as conventionally children were often ignored while arriving at decisions affecting their lives. In almost every aspect of life, views of children were not given priority. It was only during the later evolution of civilization that the concept of children's rights came up, which marked the shift from welfare to the rights based approach. In this right based approach, children were also viewed as citizens. India may take pride in being a country with one of the youngest populations in the world but as a nation there seems to be turning of eyes towards the marginalized children of our society. Keeping in mind the alarming number of children in need of care and protection and the growing need to augment the issue of child rights protection, need to create an enabling environment through appropriate legislation

was felt. Legal intervention to exhaustively deal with child rights was pressed upon. Thus, internationally as well as nationally, the child has been subjected to special laws and legal protection by reason of his tender age, weak physique and immature mind and understanding. In India various Constitutional and legislative measures were undertaken. All such legislations are premised on the notion to provide for the rehabilitation and protection of the socially and economically abused and neglected children. The following outlines the various provisions under the Constitution and other national laws for the protection of children.

The Constitutional Provisions for the Protection of Children

(a) Fundamental Rights of Children under the Constitution

Children are the valuable asset of any nation. The future of the nation depends upon its children. Fundamental rights are the negative obligations of the State in the sense they prohibit State from interfering with the enjoyment of these rights. Fundamental rights are those inalienable rights which are essential and fundamental for the survival, growth and well being of the people which includes children. Fundamental rights when implied in the context of children connote the idea of ensuring rights aiding the overall development and growth of children. Rights of the child were for the first time recognized in the Constitution of India and the manifestation of the same connote incorporation of several articles which provide for their literacy, livelihood, non discrimination in educational spheres, development of childhood, prohibition of employment in factories, mines and hazardous employment, compulsory and free education, etc. The following fundamental rights are guaranteed under the Constitution for children either expressly or impliedly:

(i) Right to Equality

Articles 14 and 15 lay down the right to equality under the Constitution of India. Article 14 declares that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The word 'person' thus, appearing in Article 14 includes children also. The Constitution mandates equality of treatment to all persons including children but with a rider. Equality among unequal would ensure inequality. The varying needs of different classes of persons often require separate treatment. The equal protection of laws guaranteed by Article 14 does not mean that all laws must be general in character. It does not mean that the same laws should apply to all persons. It does not mean that every law must have universal application for all persons are not by nature, attainment or circumstances in the same position. From the very nature of society there should be different laws in different places and the legislature controls the policy and enacts laws in the best interest of the safety and security of the State.¹ In *Suneel Jatley v. State of Haryana*² the reservation of 25 seats for admission to M.B.B.S and B.D.S course for students who were educated from classes I to VIII in common rural schools was held to be violative of Article 14 and invalid as the classification between rural educated and urban educated students for the purpose of admission was wholly arbitrary and irrational having no nexus to the object sought to be achieved of providing extra facilities to students coming from rural schools to enter medical college. Further, contextualizing the concept of

1 *Chiranjit Lal v. Union of India*, AIR 1951 SC 41

2 (1984) 4 SCC 296,

equality Article 15(1) provides that state shall not discriminate against any citizen on the ground only of religion, race, caste, sex, place of birth or residence or any of them. Article 15 (3) is in the nature of an exception to the rule of equality laid down in Article 14 and 15 (1). It empowers the State to make special provisions for women and children.

Article 15 (3) is premised on the notion that children require special treatment on account of their physical and mental immaturity. Separate positive provision serves the purpose of avoiding any controversy and demonstrates the concern, however inadequate of the framers of the Constitution that the State shall strive to promote the welfare of the people including children. Our solicitude for children and repulsion for the exploitation of children of tender age, impelled our founding father to make a specific mention of them, the state can make law for the welfare of children, giving them preferential treatment over other persons in the society.³

(ii) Right to Life

Article 21 provides for the protection of life and personal liberty of the people including children. The right to life has been interpreted not merely to physical existence but it includes within its ambit the right to live with human dignity. (**Francis Coraile case**) The Honorable Supreme Court in *R. D. Upadhyaya v. State of Andhra Pradesh*⁴ showing grace concern regarding the plight of children living in jails with prisoner mothers issued detailed directions for protecting the rights of children including their food, shelter, medical care, clothing, education and recreation facilities. The court held that before sending to jail a woman who is pregnant, the authorities concern must ensure that jail in question has basic minimum child delivery facility as well as for providing pre-natal and post-natal care for both, the mother and child. Highlighting the grave concern for children while going to schools, the Gauhati High Court in *Swapan Kumar Saha v. South Point Montessary High School and others*⁵ has held that the school management is under obligation to provide safe journey to children to school. The Court held that the overloading of school bus is violative of the right of school children to travel to school buses safely under Article 21 of the Constitution.

The right to life becomes all the more important tracking the rampant increase in female foeticide. Thousands of female foetus are murdered in their mother's womb, thus denying them the much acclaimed right to life under the Constitution of India. In *CEHAT & Others v. Union of India and others*⁶, various guidelines were issued by the Supreme Court for the proper implementation of P.N.D.T Act, thus upholding the right to life of female foetus. Article 21 of the Constitution may be interpreted to mean that the word 'person' applies to all human beings including the unborn off springs at every stage of gestation. The State cannot discriminate against persons who are fetuses by offering them less or no protection than other persons. Thus, the State is under an obligation under Article 21 of the Constitution not only to protect the life of unborn child from arbitrary and unjust

3 Paras Diwan, "Indian Constitution: A Document of People's Faith",

Allahabad Law Agency at pg 150

4 AIR 2006 SC 1946

5 AIR 2008 (NOC) 236 Gau.

6 2001 5 SCC 577

destruction but also not to deny it equal protection under Article 14 of the Constitution of India.⁷

The Right to Education

Prior to 2002, the right to education was one of the unenumerated fundamental right emanating from the right to life under Article 21 of the Constitution of India. The 86th Constitutional Amendment Act 2002, introduced Article 21 A which provide that State shall provide free and compulsory education to all children of the age of six to fourteen years. Thus, right to education, now is one of the enumerated fundamental rights under the constitution of India. Prior to 2002, with the aid of judicial intervention the "Right to Education" was implied as a fundamental right from Article 21. The word "life" was held to include 'education' because education promotes good and dignified life.⁸ In *Mohini Jain v. State of Karnataka*⁹ the Supreme Court has held that the right to education is a fundamental right under Article 21 of the Constitution which cannot be denied to a citizen by charging higher fee known as the capitation fee. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The education brings excellence; it enriches the mind and illuminates the spirit. It prepares a child for a good citizenship. It liberates from ignorance, superstition, prejudices and ultimately unfolds the vision and truth. In *Unni Krishnan v. State of Andhra Pradesh*¹⁰ the Court has reiterated the proposition that having regard to the fundamental significance of education to the life of an individual and nation, the right to education is implicit in, and flows from the right to life guaranteed by Article 21. Further that right is not absolute and the parameters of the same have to be determined in the light of the Directive Principles contained in Articles 41, 45 and 46 of the Constitution of India. With the 86th Amendment Act 2000, Article 21A was introduced which provided right to education as fundamental right of children in express terms. In *Avinash Mehrotra v. Union of India and Others*¹¹ it was held that educating a child requires more than a teacher and a blackboard, or a classroom and a book. The right to education requires that a child should study in a quality school and a quality school certainly should pose no threat to a child's safety. The Honorable Supreme Court while considering the policy of requisitioning school teachers to conduct elections during normal school hours, in *Election Commission of India v. St. Mary's School*¹² observed that certain laws and policies of the Government actively impede the achievement of the constitutional goal of universal primary education laid down under Article 21 A. The Honorable court while recognizing the paramount importance of free and fair elections held that nevertheless the fundamental right to primary education could not be subordinated to this constitutional priority. Taking note of the deplorable condition of primary education in India, it was laid down that teaching staff should ordinarily be deployed for election duties only on holidays and non-teaching days.

7 G.V.Ramaiah, "Right to conceive vis-à-vis Right to birth", AIR (Journal), 1996 at pg. 136

8 MP Jain pg. 1129

9 AIR 1992 SC 1858

10 AIR 1993 SC 2178

11 MANU/SC/0555/2009

12 AIR 2008 SC

(iii) Right against Exploitation

Article 23 of the Constitution prohibits traffic in human beings, beggar and other similar forms of forced labour and exploitation. Although this Article does not specifically speak of children, yet it is applied to them and is more relevant in their context because children are the most vulnerable section of the society. There is no denial in the fact that many a times, particularly in cases of poor strata of the society, children are exploited even by the parents who allow exploitation of their children because of their poverty. Such children are deprived of education, made to do all sorts of work which may be injurious to their health and personality.¹³ It has been come across through news items or otherwise that in rural areas, children are pledged by destitute parents to the landlords as full time servant or part time worker to look after both domestic and agricultural operation. In Urban setup, the exploitation of children is manifested in number of ways in the form of helpers to artisans and skilled workers and also as domestic servant.¹⁴ In a reference to children the word "begar" offers wider connotation. Not only total absence of payment amounts to 'begar', inadequate payment for the work rendered by the child also amounts to 'begar' or forced labour. Capturing and maiming of children by gangs so as to accommodate such children in begging business, constitutes the most heinous and atrocious violation of the rights of children. Further in violation of Article 23, children of tender age are enticed for the flesh trade. Article 24 prohibits the employment of children below the age of 14 years in factories, mines or hazardous employment. This provision is definitely in the interest of public health and safety of life of children. Article 24 is plainly and indubitably enforceable against everyone and by reason of its compulsive mandate no one can employ a child below the age of 14 years in hazardous employment. *In People's Union for Democratic Rights v. Union of India*¹⁵ and *Labours Working on Salal Hydro Project v. State of Jammu and Kashmir*¹⁶ it was held that the construction work is a hazardous employment and children below 14 cannot be employed in this work. In *M.C. Mehta v. State of Tamil Nadu*¹⁷ the Court has considered the constitutional perspectives of the abolition of child labour in Sivakasi Match Industries and has issued detailed directions to eradicate the practice of employing children below the age of 14 years in this hazardous industry. The Courts has insisted that the employers must comply with the provisions of Child Labour (Prohibition and Regulation) Act. The Court has emphasized that abolition of child labour is definitely a matter of great public concern and significance.

(c) Directive Principles of State Policy and Children

In addition to the above mentioned mandates in the Constitution, there are certain other provisions contained in Part IV providing for the Directive Principles of State Policy. The provisions in Part IV though do not lay direct emphasis on child welfare, yet children are deemed to be beneficiaries in the event of implementation of these provisions. The underlying principle of the Directive Principles of State Policy is to fix certain social and economic goals for immediate attainment by bringing about a non violent social revolution.

13 V.N. Shukla, *Constitution of India*, Eastern Book Company, 2001 (9th ed.) at pg. 310

14 Sudesh Kumar Sharma, "Child and the Constitution: An Appraisal in Distributive Justice Prospective", Supreme Court Journal, 1989 (II) at pg 12

15 AIR 1983 SC 1473

16 AIR 1984 SC 177

17 (1996) 6 SCC 756

With the aid of such social revolution the Constitution also endeavor to achieve the objectives of child welfare.¹⁸ The Directive Principles lay down the goals which may be achieved through various means which have to be devised from time to time. They strive to promote the welfare of people by securing and protecting as effectively as it may a social order in which justice social, economic and political shall inform all the institutions of national life.¹⁹ An effective implementation of the above stated principle results in promoting the welfare of people manifested in social, economic and political justice and in the wake of that child welfare is also promoted proportionally. It²⁰ provides that State shall direct its policy towards securing the principle to protect health and strength of workers (Including children above 14 years and children below 14 working in non-hazardous employments) and tender age of children and to ensure that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Further that, children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The Government of India in pursuance of the directives contained in Article 39(e) and (f) has evolved a National Policy for the Welfare of Children. The policy declares: "The Nation's Children are a supremely important asset". The Policy sets out measures which the Government of India seeks to adopt for the welfare of children and to protect them from cruelty and exploitation.²¹ In *Sheela Barse v. Union of India*²² the Supreme Court in pursuance of Article 39(f), has directed release of all children below the age of 16 years from jails. Further, the Court has exhorted the States to set up necessary remand homes and juvenile courts. The Supreme Court while laying down detailed guidelines to regulate adoption of Indian children by foreigners in *Lakshmi Kant Pandey v. Union of India*²³ has laid emphasis upon the great significance of child welfare in the country. It was recognized that the welfare of entire community depends on the health and welfare of its children. Further Article 47 imposes duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. By necessary connotation it can be inferred that it is the responsibility of State to provide nutritious food to children as the word "people" includes not only adults but children as well. In fact the provision becomes all the more relevant in case of children as malnutrition can cause irreparable damage to the personality of the children through development of various deformities on account of lack of balanced diet.²⁴ Standard of living of people in a country has a direct relationship with level of economic development of the country. The higher the standard of living of the citizens of the country, the higher is the level of economic development. The standard of living in turn is dependent on the availability of the food to the people in particular children. On account of needs of growing bodies of children, the State has utmost duty in case of children to perform. Further State has the responsibility to make improvement in public health and in particular improvement in the health of children. In *Paschim Banga Khet Mazdoor Samity v. State of*

18 Tapan buk ornage iphone pp74-75

19 Article 38(1) of Indian Constitution

20 Article 39 (e) and (f) of Indian Constitution

21 MP Jain, pg 1379

22 AIR 1986 SC 1773

23 AIR 1984 SC 469

24 Blue book Gopal Bhargava, pg 71

*West Bengal*²⁵ the Supreme Court has observed that "in a welfare state the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centers which provide medical care to the person seeking to avail of those facilities". Thus, state is under responsibility to provide for adequate medical health facilities for children also. Adequate efforts should be made to provide for immunization of children and protecting them from various diseases.

Provisions Under Various National Laws for the Protection of Children

Various national laws for the protection of children have been formulated from time to time, in consonance with the Constitutional mandate to provide protection to children and in fulfillment of various obligations undertaken at the international level. State is under obligation internationally, moral if not legal to provide for various welfare measures for the children. Proactive rather than protective approach is the underlying theme of various efforts taken by the legislature in India. Appropriate laws have been framed to prevent exploitation economic and social of children. At the same laws incorporating positive directives in the form of providing for various welfare measures have been undertaken. While there are laws which deal exclusively with children, to prevent their exploitation and to improve their conditions such as, the Child Labour (Prohibition and Regulation) Act 1986, the Right to Education Act 2009, The Protection of Children from Sexual offences Act 2012, The Prohibition of Child Marriage Act 2006 etc. There are also laws which include certain provisions for Children, for instance IPC, Cr.P.C, C.P.C, Hindu Marriage Act 1956 etc. legislative initiatives aimed at protection of children are outlined below:

(a) Various laws Prohibiting Child Labour

In order to fulfill the Constitutional and International obligation towards the elimination of child labour in India under various occupations, various legislative measures were enacted from time to time. Apart from various legislative measures that deal with labour force generally including children, The Child labour (Prohibition and Regulation) Act, 1986 is the Act dealing exclusively with children. The Child labour (Prohibition and Regulation) Act, is an outcome of various recommendations made by series of Committees such as, the National Commission on Labour 1969, the Committee on Child Labour 1979, Gurupadswamy Committee on Child Labour 1976 and Mehta Committee 1984. The Child labour (Prohibition and Regulation) Act, 1986 came into force on 23rd December 1986 with the objective to ban the employment of children who have not completed 14 years of age in certain specified operations and procedures²⁶ and to regulate the conditions of work of children in employments where they are not prohibited from working. The Act prohibits the employment of children in excess of number of hours specified for an establishment, **(Section 7(i))**, maximum period for work for child at stretch is specified as 3 hours and mandatory interval for at least one hour**(7(ii))** with specified shift of work for not more than 6 hours;**(7(iii))** child shall not be permitted or required to work between 7 p.m. and 8 a.m.;**(7(iv))** written notice to jurisdictional inspector within 30 days of employment of child

25 AIR 1996 SC 2426

26 (Section 3 and rest from footnote 212 pg 301 Dr. Nuzhat book

should be sent; (9(ii)) penalties for employment of children in contravention of provisions of the Act(14)

(b) The Hindu Adoption and Maintenance Act 1956

Adoption facilitates the right to family of orphaned, destitute, abandoned child. (though not always, even a child with parents can be adopted) At the same time adoption afford continuance of lineage of the childless persons. But the vital consideration is the protection of the interests of the children aims at exclusion of commercialization of relationship. The Hindu Adoption and Maintenance Act is the only personal law that provides for adoption of hindu and by hindu. The Act gives privacy to the act of adoption by prescribing simple ceremony of giving and taking child in adoption; (**Section 9**) both male and female hindu have after the amendment act of 2010 has the equal right to adopt a child provided they are major and of sound mind; (**Section 7 and 8**) to prevent any sexual exploitation of the adopted child it is provided that there shall be minimum age difference of 21 years between the adoptive parents and the adopted child if they are of opposite sex; (**Section 11**) to prevent sex selective adoption and to ensure equality of opportunities for adoption Act provides no adoption of male child if son, son's son and son's son's son living at the time of adoption. Similarly no adoption of female child if daughter or son's daughter is living at the time of adoption. (**Section 11**)

(c) The Commission for the Protection of Child Rights Act, 2005

The Commission for the Protection of Child Rights Cat provides for the establishment of National commission of the Protection of Child rights. (**Section 3(1)**) The Act provide for major functions of commission inter alia, to study and monitor all matters relating to Constitutional and Legal Rights of Children; to review the existing laws and suggest amendments required; to examine the factors which hinder the enjoyment of rights of children n adverse circumstances; to monitor implementation of laws and programmes relating to the survival, welfare and development of the children; to look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate medical measures; to create child rights awareness The Act under Section 25 provides for the establishment of Court of Session as Children's Court in every district. (**Section 25**)

(d) The Child Marriage Restraint Act, 1929 and The Prohibition of Child Marriage Act 2006

The Child marriage results in violation of human rights of children and more often girl child. On account of early pregnancy in such marriage and social isolation, child marriage compromises the development of girl child. The Child Marriage Restraint Act, 1929 was enacted to prevent solemnization of child marriages. It lays down the minimum age of marriage for boys at eighteen and for girl at fifteen. The Child Marriage Restraint Cat prohibits the child marriage, but once child marriage takes place, the marriage is neither void nor illegal but perfectly valid and only punishment imposed is sentence for 3 months and fine.²⁷ The Prohibition of Child Marriage Act 2006 with the underlying objective to provide for the prohibition of solemnization of child marriages and matters connected

27 Section 5 of Child Marriage Restraint Act 1929

therewith or incidental thereto, came into force on 10th January 2007²⁸ and it is a secular Act, a piece of uniform civil code. The Act lays down that a "child marriage" is a marriage to which either of the contracting parties is a child(**section 2(b)**) and "child" as a person who if male has not completed the age of twenty one years and if a female has not completed the age of eighteen years. (**Section 2 (a)**) The most significant departure of the Act of 2006 is that it provides that a child marriage is voidable at the option of the contracting party who was child at the time of marriage (**Section 3**) and such marriages null and void in case the child is enticed or taken away from the custody of his/her lawful guardian or is by force compelled or by deceitful means induced to go from any place or is sold for the purpose of marriage and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes. (**Section 12**) Further, in cases where decree of nullity for child marriage is sought, order can be made by the court directing the parties to the marriage and their parents or their guardians for return of money. Gifts etc. received on the occasion of marriage. (**Section 3(4)**) To protect the interest of the child born out of such marriages, Act provided that every child begotten and conceived of such marriage shall be deemed to be a legitimate child for all purposes. (**Section 6**)

(e) The Right of Children To Free and Compulsory Education Act,2009

Premised on the ideology that the values of democracy, equality and social justice and creation of just and humane society are viable only through the availability of inclusive elementary education to all, The Right of Children to Free and Compulsory Education Act came into force on 1st April 2010. Act mandates the responsibility of providing free and compulsory education not only of the school run on or supported by the appropriate governments but also of school which are not dependent on government funds. Act defines "child" as a male or female of the age of six to fourteen years. (**Section 2(c)**) "Elementary education" under the Act means the education from first to eighth class. (**2(f)**) Further, "child belonging to disadvantaged group" means a child belonging to the scheduled caste, the scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government by notification. (**2(d)**) and "child belonging to weaker section" means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification. (**2(e)**) The term "compulsory education" is defined under the Act to provide free elementary education to every child of the age of six to fourteen years and ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years. (**8(a)**) Act provides that every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighborhood school till completion of elementary education (**3(1)**) The remarkable feature of the Act, is the provision of free and compulsory elementary education for a child suffering from disability as defined under Section 2(1) of the Persons with Disabilities (Equal Opportunities, Protection and Full Participation) Act, 1996. Another distinguishing feature of the Act is that it provides that where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then

he or she shall be admitted in a class appropriate to his or her age and that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.**(4)** To ensure the virtual achievement of free and compulsory education to all, Act incorporates various safeguards, including, ban on collection of capitation fee,**(33)** no school or person shall while admitting a child, subject the child or his or her parents or guardian to any screening procedure**(33)**, no child shall be denied admission in a school for lack of age proof. **(14)(2)** The Act prohibits a school from holding back a child in any class or expelling a child from school till the completion of elementary education. **(16)** The Act also prohibits the school from giving any type of physical punishment or mental harassment to any child. **(17)(1)** The Act in order to make education comprehensible for child provides that the curriculum and evaluation procedure shall be laid down taking into consideration all round development of the child, development of physical and mental abilities to the fullest extent and learning through activities, discovery and exploration in a child friendly and child centered manner, making the child free of fear, trauma and anxiety and helping the child to express views freely.**(29)** The Act also lays down the duty of parents or guardian to admit or cause to be admitted his or her child or ward to an elementary education in the neighborhood school.**(10)** The Act also provides for pre school education for children. The Act lays down that with a view to prepare children above the age of three years for elementary education and to provide early childhood care and education for all children until they complete the age of six years, the appropriate government may make necessary arrangement for providing free pre school education for all such children.**(11)** To ensure dedicated and quality education Act provides that, no teacher shall be deployed for any non-educational purpose (except those which are mentioned in the section) **(27)** and that no teacher shall engage himself or herself in private tuition or private teaching activity.**(28)**

(f) The Protection of Children from Sexual Offences Act, 2012

For the proper development of the child, his or her right to privacy and confidentiality shall be protected and respected. The best interest of the child should be of paramount consideration and efforts should be made to ensure the healthy physical, emotional, intellectual and social development of the child. With all the above objectives in mind and under the aegis of Article 15(3) of the Constitution, The Protection of Children from sexual offences Act was enacted and came into force on 12th June 2012. The Act mandated that sexual exploitation and sexual abuse of children are heinous crimes and need to be effectively addressed. The Act provides for prosecution of child head mainly under five heads, penetrative sexual assault, **(Section 3&4)** aggravated penetrative sexual assault**(5&6)** sexual assault**(7&8)** aggravated sexual assault**(9&10)** sexual harassment**(11&12)** While penetrative sexual assault covers all kind of acts using body parts or objects, the other acts come under sexual assault. Sexual harassment covers abuse of child using gestures and spoken words. The term aggravated is prefixed to offences wherein the perpetrator is a person who wields power by virtue of being in a position or authority or trust or when the victim has mental or physical disability.²⁹ The Act further provides punishment for using child in any form of media for the purposes of sexual gratification , including representation

29 Dr Nuzhat Parveen book

of sexual organs, usage of child engaged in real or stimulated sexual acts and the indecent or obscene representation of a child.(13 &14)

(g) The Juvenile Justice (Care and Protection of Children) Act,2016

In the past history, very less emphasis was paid to the rights of children. No special measures were available to protect children from neglect, exploitation and exposure to hazards. There was no provision to deal separately with those children who offended against the law. But in the last sixty years or so demonstrable progress has been made in the field of government initiative in the form of child specific legislatures. The 2016 Act aims to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal in matters in the best interest of children and for their rehabilitation through processes provided and institutions and bodies established. The fundamental principle underlying The Juvenile Justice (Care and Protection of Children) Act, 2016 (hereinafter referred to as JJCPA 2016) is that children who commit offences and children who need care and protection both would fall within the ambit of the Juvenile Justice System. The Act provides for certain avenues for the release of the child either to parents, guardians, fit persons or adoptive parents or to people who would provide foster care. However, fundamental principle of the juvenile justice system as is reflected in the statement of object and reasons, is to provide for proper care, protection and treatment by catering to their development needs within an institutional setting. "Child" is defined under the Act to means a person who has not completed eighteen years of age (**Section 2 (12)**), Distinct terms are used for the children in the Act depending upon the conditions. Three types of offences classified under the Act are, firstly, heinous offences which attract a minimum penalty of seven years imprisonment under any existing law (**Section 2(33)**). Secondly, Serious offences for which imprisonment between three to seven years has been laid down. (**Section 2(54)**) and thirdly, petty offences, those punished with imprisonment upto three years.

(h) Relevant Provisions under the Indian Penal Code

There are many provisions under the penal code which provide for offences against children both before their birth and after their birth. Voluntary causing miscarriage of with child of woman, if such miscarriage is not caused in good faith for the purpose of saving the life of women is punishable. (**Section 312 and 314**) An act done with the intention of preventing the child from being born alive or cause it to die after its birth and resultantly prevent that child from being born alive is punishable with ten years imprisonment or with fine or both. (**Section 315**) Causing death of quick unborn child by an act amounting to culpable homicide is punishable under the Act. (**Section 316**) Provisions for prohibiting offences against children after their birth involve, exposure and abandonment of child under twelve years, by parent or persons having care of it, (**Section 317**) Concealment of birth by disposal of dead body (**Section 318**), Kidnapping form India and kidnapping form lawful guardianship, (**Sections 360 and 361**) kidnapping or maiming a minor for the purposes of begging (**Section 363-A**)Kidnapping for ransom (**Section 364 A**) Kidnapping or abduction with intent secretly and wrongfully to confine person, (**Section 365**) Procuration of minor girl, (**Section 366-A**) Importation of girl from foreign country (**Section 366-B**) kidnapping or

abducting a child under ten years with intent to steal from its person, (**Section 369**) Selling minor for the purpose of prostitution etc., (**Section 372**) Buying minor for the purposes of prostitution (**Section 373**) Unlawful compulsory labour (**Section 374**). It is submitted that though certain sections in IPC which are outlined as above deal directly with the child but there are other sections which have no direct reference to child. In such sections, wherever word 'person' is used it is construed as child as well.

Conclusion

Every child has the right to grow to adulthood in health, peace and dignity. Ensuring the rights of children to health, nutrition, education, social, emotional and cognitive development is imperative for every country and entails obligations for every government. Ensuring that children enjoy fundamental rights and freedoms not only advances a more equitable society, but foster a healthier, more literate and, in due course, a more productive population. The fulfillment of children's rights, including those to protection, depends on a national movement in which everybody not only understands and respects their duties to children, but also acts upon them. As seen from above, the human rights of children in various areas are being violated and are a cause of concern for every right thinking citizen of the country. Several new plans, schemes and programmes have been initiated to address issues concerning children. Yet, the plight of children across the country has not got better and continues to be precarious. Though our Constitution provides ample safeguards to the children of our country in its various provisions and the laws made under those provisions, yet a lot still needs to be done to ensure that every child in India has a safe childhood and a bright future for him ahead. Children being our supreme asset, nothing concerning their survival, development, protection and participation can be ignored or sidelined anymore.

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