



An Analysis Of Legislation In Reference To Welfare Of Child: International And National Perspective

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ABSTRACT

This paper provides an analysis of legislation concerning the welfare of children from both international and national perspectives. The welfare of children is a critical issue globally, as children are vulnerable members of society requiring protection and support to thrive. This analysis examines key international frameworks and conventions, such as the United Nations Convention on the Rights of the Child (UNCRC), and explores how they influence national legislation in various countries. Additionally, it investigates the implementation of child welfare laws in selected nations, considering their effectiveness, challenges, and areas for improvement. Through a comparative lens, this paper aims to identify common themes, disparities, and best practices in child welfare legislation worldwide. By evaluating the legal frameworks at both international and national levels, this analysis seeks to contribute to ongoing efforts to safeguard the rights and well-being of children globally.

Objective of study

The welfare of children is a fundamental concern for societies worldwide. Ensuring that children are provided with a nurturing and supportive environment is essential for their healthy development and future well-being. Legislation plays a crucial role in safeguarding the rights and interests of children, both at the international and national levels. This preface sets the stage for an in-depth analysis of legislation pertaining to the welfare of children, examining its implications from both global and local perspectives.

The purpose of this analysis is to explore the intricate relationship between international frameworks and national legislation concerning child welfare. By delving into key international instruments, such as the United Nations Convention on the Rights of the Child (UNCRC), and examining how they influence domestic laws in various countries, we aim to gain insights into the mechanisms designed to protect and promote the welfare of children on a global scale.

Furthermore, this analysis seeks to evaluate the effectiveness of child welfare legislation at the national level, considering factors such as implementation, enforcement, and adherence to international standards. By examining case studies and comparative analyses of selected countries, we endeavor to identify common challenges, disparities, and best practices in child welfare legislation.

It is our hope that this analysis will contribute to a deeper understanding of the legal frameworks governing child welfare and serve as a valuable resource for policymakers, advocates, and researchers striving to advance the rights and well-being of children worldwide. Through informed analysis and dialogue, we aspire to foster greater collaboration and advocacy efforts aimed at ensuring that every child has the opportunity to grow up in a safe, nurturing, and supportive environment

CHAPTER 1 INTRODUCTION

“If we are to teach real peace in the world, and if we are to carry on a real war against war, we shall have to begin with the children.”

Mahatma Gandhi

Children are the foundation of human society. Their physical and mental well-being will determine the kind of community we will have in future. Just as the personality of an adult is built in his or her primitive years, the development of a nation is determined by the priority given to his child. Despite numerous laws and the resolutions aimed at protecting them, many children still suffer from exploitation. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being a number of resolutions and laws both at national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation.¹

The welfare of children is a paramount concern for both national governments and the international community. Legislation plays a crucial role in safeguarding the rights and well-being of children, addressing issues such as education, healthcare, protection from abuse and exploitation, and ensuring their overall development. This analysis will examine the legislative frameworks, both at the national and international levels, aimed at promoting the welfare of children. It will explore key provisions, implementation challenges, and the effectiveness of these laws in addressing the diverse needs of children in different contexts. By examining legislation from both international and national perspectives, this analysis seeks to provide insights into the efforts made to protect and promote the welfare of children globally.

¹ M.B. Jameel, “Menace of Child Labour,” Paper Published in Souvenir of National Seminar on Child Rights in the Background of the U.N. Convention on the Rights of Child, 1989 organised by the Department of Law, Dr. Ambedkar College, Nagpur, 73 (15th & 16th February, 2004).

1.1 Legal Definitions of Child

1. Oxford Dictionary of English defines the term 'Child' as a young human being below the age of full physical development.²
2. The U.N. Convention on the Rights of the Child, 1989 defines that term 'Child' means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.³
3. The Indian Christian Marriage Act, 1872 does not define the term 'Child'. Instead it defines the term 'Minor' which means a person who has not completed the age of twenty one years and who is not a widower or a widow.
4. The Majority Act, 1875 does not define the term 'Child.' It defines that every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.⁴
5. The Guardians and Wards Act, 1890 also does not define the term 'Child'. It defines that 'Minor' which means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority.⁵
6. The Reformatory Schools Act, 1897 also does not define the term 'Child'. It defines that 'Youthful Offender' means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.⁶
7. The Indian Succession Act, 1925 does not define the term 'Child'. It defines that 'Minor' means any person subject to the Indian Majority Act, 1875 who has not attained his majority within the meaning of that Act and any other person who has not completed the age of eighteen years.⁷
8. The Child Marriage Restraint Act, 1929 defines that 'Child' means a person who, if male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.⁸
9. The Tea Districts Emigrant Labour Act, 1932 provides that 'Adult' means a person who has completed his sixteenth year, and 'Child' means a person who is not an adult.⁹ It means 'Child' is a person below the age of sixteen years.
10. The Children (Pledging of Labour) Act, 1933 defines that 'Child' means a person who is under the age of fifteen years.¹⁰

² Catherine Soanes and Angus Stevenson (ed.), Oxford Dictionary of English, New Delhi, Oxford University Press, 300 (2004)

³ Article 1 of the Convention.

⁴ Id., Sec. 3

⁵ Id., Sec. 4 (1)

⁶ Sec. 4 (a)

⁷ Sec. 2 (e)

⁸ Sec. 2 (a)

⁹ Sec. 2 (d)

¹⁰ Sec. 2

11. The Employment of Children Act, 1938 does not define the term 'Child.' But it prohibited employment of children below the age of fifteen years in any occupations specified in the Act.
12. The Bengal Vagrancy Act, 1943 provides that 'Child' means a person under the age of fourteen years.¹¹
13. The Factories Act, 1948 defines that 'Child' mean a person, who has not completed his fifteenth year of age.¹²
14. The Minimum Wages Act, 1948 defines that a 'Child' means a person who has not completed his fourteen years of age.¹³
15. The Plantations Labour Act, 1951 defines the term 'Child' means a person who has not completed his fourteenth year of age.¹⁴
16. The Cinematograph Act, 1952 defines that "Adult" means a person who has completed his eighteenth year.¹⁵ This Act uses the word 'Child' in many of its provisions but it does not define the age but from the definition of 'adult' inference can be drawn that 'child' means a person below the age of eighteen years.
17. The Immoral Traffic (Prevention) Act, 1956 defines that 'Child' means a person who has not completed the age of sixteen years.¹⁶
18. The Women's and Children Institutions (Licensing) Act, 1956 defines that 'Child' means a boy or girl who has not completed the age of eighteen years.¹⁷
19. The Young Persons (Harmful Publications) Act, 1956 does not define the term 'Child.' It defines that 'Young Person' means a person under the age of twenty years.
20. The Hindu Minority and Guardianship Act, 1956 does not define the term 'Child.' Instead it defines the term 'Minor' which means a person who has not completed the age of eighteen years.¹⁸
21. The Bombay Prevention of Begging Act, 1959 defines that 'Child' has the meaning assigned to it in the Children Act for the time being in force in the Union Territory of Delhi.¹⁹ It means 'Child' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years as per the Children Act, 1960.
22. The Children Act, 1960 defines 'Child' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.²⁰

¹¹ Sec. 2 (3)

¹² Sec. 2 (c)

¹³ Sec. 2 (bb)

¹⁴ Sec. 2 (c).

¹⁵ Sec. 2 (b).

¹⁶ Sec. 2 (aa).

¹⁷ Sec. 2 (a).

¹⁸ Id., Sec. 4 (a)

¹⁹ Sec. 2 (e)

²⁰ Sec. 2 (c).

23. The Orphanage and Other Charitable Homes (Supervision and Control) Act, 1960 defines that 'Child' means a boy or a girl who has not completed that age of eighteen years.²¹

24. The Motor Transport Workers Act, 1961 defines that 'Child' means a person who has not completed his fourteenth year of age.²²

25. The Maternity Benefit Act, 1961 defines that 'Child' includes a still- born child.

26. The Income Tax Act, 1961 does not define the age of 'Child.' It defines it for the purpose of assessment which means 'Child', in relation to an individual, includes a step-child and an adopted child of that individual.²³

27. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 defines that 'Child' means a person who has not completed fourteen years of age.²⁴

28. The Medical Termination of Pregnancy Act, 1971 also does not define the term 'Child'. It defines that 'Minor' means a person who under the provisions of the Indian Majority Act, 1875 is to be deemed not to have attained his majority.²⁵

29. The Dangerous Machines (Regulation) Act, 1983 defines that 'Child' means a person who has not completed his fourteenth year of age.²⁶

30. The Child Labour (Prohibition and Regulation) Act, 1986 defines the term 'Child' means a person who has not completed his fourteenth year of age.²⁷

31. The Juvenile Justice Act, 1986 does not define 'Child.' It says that 'Juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years.²⁸

32. The Mental Health Act, 1987 does not define the term 'Child'. Instead it defines that 'Minor' means a person who has not completed the age of eighteen years.²⁹

33. The Juvenile Justice (Care and Protection of Children) Act, 2000 defines that 'Juvenile' or 'Child' means a person who has not completed eighteenth year of age.³⁰

34. The Goa Children's Act, 2003 defines that 'Child' means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this Act. Provided that in so far as a victim in an offence of rape is concerned, 'Child' shall mean

²¹ Sec. 2 (c).

²² Sec. 3 (b).

²³ Sec. 2 (b).

²⁴ Sec. 2 (c).

²⁵ Sec. 3 (a).

²⁶ Sec. 2 (ii)

²⁷ Sec. 2 (h)

²⁸ Sec. 2 (q).

²⁹ Sec. 2 (k).

³⁰ Sec. 2 (d).

any person who has not completed sixteen years of age.⁴⁸ Similarly, 'Child in case of Child Labour', shall be a person who has not completed his fourteenth year of age.³¹

35. The Protection of Women from Domestic Violence Act, 2005 defines that 'Child' means any person below the age of eighteen years and includes any adopted, step or foster child.³²

36. The National Rural Employment Guarantee Act, 2005 does not define the term 'child.' But it defines that "Adult" means a person who has completed his eighteenth years of age.³³ Researcher is of the view that inference can be drawn that 'child' or 'minor' is a person below the age of eighteen years as per this Act.

37. The Prohibition of Child Marriage Act, 2006 defines that 'Child' means a person who, if male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.³⁴

38. The Right of Children to Free and Compulsory Education Act, 2009 defines that 'Child' means a male or female child of age of the six to fourteen years.

39. The Protection of Children from Sexual Offences Act, 2012 defines that 'Child' means any person below the age of eighteen years.

40. The Juvenile Justice (Care and Protection of Children) Bill, 2014 defines that 'Child' means a person who has not completed eighteen years of age.³⁵ So, after going through various definitions of 'Child' provided by our national laws, inference can be drawn that there is no uniform definition of the term 'Child' or 'Children' in India. Some Acts defines the term 'Child' while others define the term 'Minor'.

Chapter-2

FRAMEWORK OF CHILD WELFARE

Welfare of children has been one of the complex issues facing the societies in modern times. The complexity in part arises from the fact that welfare of the children is very much a part and parcel of the social and economic contexts of a country. Such contexts undoubtedly varies from country to country to such an extent that it is very difficult even in the bigger but diverse societies to find some sort of commonality in the frameworks within which the idea of child welfare is conceptualised. Hence, it becomes one of the formidable challenges before the policy makers and planners in both national and international milieus to conceptualise and draft the appropriate policies and programmes for the welfare for the children in such a way that they become acceptable to a majority, if not all, of the stake holders in different parts of the world. As far as India is

³¹ Sec. 2 (c)

³² Sec. 2 (a)

³³ Sec. 2 (a).

³⁴ Sec. 2 (c)

³⁵ Id., Sec. 2 (h)

concerned, given the relative social and economic backwardness of the country, the issues and challenges concerning the welfare of the children have been contextualised in varying circumstance depending upon the prevailing situations on the one hand, and the global perspectives on the welfare of the child, on the other.

At the same time, the problem in proper conceptualisation of the idea of child welfare also emanate from the fact that in the traditional folklore as well as established practices of the country, the issues of child welfare is not only clubbed with the welfare of the women but also romanticised in such a way that the real issues that bother the proper growth and development of the children usually get relegated background. In other words, while motherhood and the romantic view of childhood emphasise dependence, love and innocence of small beings, the actuality of child life anywhere in the world is much less romantic. More often than not, a child is considered a small version of the adult, and thousands of children continue to be a parent's possession without moral or legal protection against parental or social exploitation and oppression. From high infant mortality and child labour in India to drug addiction and child battering in industrial societies is also a painful fact. Child development services are consequently rather recent social measures. In India, we can take pride of having made remarkable progress in framing modern policies and projects, but population increase drastically reduced their impacts. In India, the task is enormous. We have to reduce disparities, increase services, and upgrade standards. However, difficult in such a large country, our five year plans have made many radical changes in the status of child in the country. As a result, India is now considered as one of the few countries in the world with such a comprehensive framework of protection and promotion of child rights including initiation of a number of measures for welfare of the children. This chapter seeks to analyse the national and international frameworks of child welfare.

2.1 National Framework

The national framework of child welfare consists of a number of legal and institutional instruments and arrangements respectively so as to offer a comprehensive system through which the issues and challenges facing the children in the country could be addressed. These instruments and arrangements act as the guiding principles and institutional pillars around which the entire edifice of child welfare in the country could be conceptualised.³⁶ What therefore follow next are an analysis of the important legal instruments and the core of the institutional arrangements that make for the national framework of the child welfare in the country.

2.1.1 Child Rights Act, 2005

The legal framework for the protection and promotion of the issues of the child welfare in the country has been ordained by the constitutional stipulations on the subject on the hand and the international persuasions for the same on the other. For instance, for a long period of time, the issues of the child welfare remained peripheral in the development discourse of the country due to the fact that the country had adopted such an approach of development in which the focus of attention of the planners and the policy makers was on the different sectors rather than the different groups of people in the society. In such a situation, the basic thrust for the enactment of a dedicated law for addressing the issues of child welfare came from the international pressures in terms of the enactment of the Convention on the Child Rights by the United Nations

³⁶ Manjula Batra, *Women and Law and Law relating to Children in India*, Faridabad: Allahabad Law Agency, 2010, p. 19

General Assembly. Being an ardent supporter of the United Nations, India could not desist for long from enacting a matching legislation on the subject. Subsequently, the Child Rights Act was enacted in 2005 to act as the primary piece of legislation for the protection and promotion of the rights of the children that would eventually go to provide for the policy perspective on the welfare of the children in the country.

The enactment of the Child Rights Act in 2005 has basically served two purposes insofar as the welfare of the children in the country is concerned. At the very outset, it lays down the basic principles and precepts based upon which the idea of the welfare of the child in the country could be visualised. For instance, it laid stress on the fact that the children are a vulnerable lot in the country in need of special treatment as well as protection of their rights. Accordingly, it stressed the need for the creation of a dedicated system of both laws and administration so that the issues of the child welfare can be addressed in more effective and efficient manner.³⁷ Next, in order to put into practice what it has professed by way of the principles and the precepts, the Act provided for the setting up of a dedicated body in the name of the National Commission for the Protection of the Child Rights as the apex body that would look into the issues of the child welfare in the country.³⁸ Thus, the Child Rights Act, 2005 has helped in the evolution of a comprehensive framework for the protection and promotion of the child rights in the country by way of not only stipulating the legal framework but also by providing for the setting up of the apex body in the country for the welfare of the children in the country.

2.1.2 Juvenile Justice (Care and Protection) Act, 2015

Another important piece of legislation that has gone a long way in making sure that the children in the country do not suffer from the stigma of being criminal or other bad characters has been the Juvenile Justice Act enacted in 2015. As a matter of fact, in the countries like India where the levels of social and economic development has not been very profound or of very high nature, there is quite frequent possibility that different sections of the society including the children jump the band wagon of committing crime and become a liability for the society. Hence, it has long been argued that the issues of the protection and promotion of the rights of the children need to be looked into from this perspective as well.³⁹ After a long deliberations and taking inputs from the different stake holders, the government enacted the Act as the basic document that would determine the dealings of the children caught in the situations of conflict with law or the children in need of care and protection. Thus, the passage of this act came as the fulfillment of a long due dream for the children and the child rights activists who were arguing for a separate set of laws and mechanisms for the handling of the cases pertaining to the juveniles.

The basic improvisations sought to be brought by this legislation in the protection and promotion of the child rights in the country could be seen in terms of the two distinct bodies that were to be set up to deal with the cases involving children. The primary body in this regard has to be the Juvenile Justice Board to be set up as and when needed in both the states as well as the union territories to deal with the cases of the delinquent

³⁷ Susan Matthews, *A Report of the National Consultation on Juvenile Justice*, New Delhi: Metropolitan, 2002, p. 16

³⁸ Indu Baghel and Yadav, Surya Narain, *Human Rights in the 21st Century*, New Delhi: Jnanada Prakashan, 2017, p. 28

³⁹ G.S. Bajwa, *Human rights in India: Implementation and Violation*, New Delhi: Anmol Publications, 2016, p. 90

behaviour of the children below the age of adulthood. For the cases of the delinquent behaviour of the children, the appropriate forum to deal with their cases would be these boards that would adopt a different approach in dealing with the children. The essence of this approach would be that the children charged with certain bad behaviour the board would adopt a reformist approach in place of the punitive approach that had been the dominant paradigm of dealing with such cases in the country. The other body that this Act sought to create was the Child Wellbeing Committee that is to act as the custodian of the child put under the control of the state for its reformation.⁴⁰ Thus, the basic approach to deal with the delinquent behaviour of the child underwent a subtle transformation in the wake of the passage of this act that has in fact laid the foundation for the creation of new sets of bodies in the country.

2.1.3 Protection of Children from Sexual Offences (POCSO) Act, 2012

It has been a well known fact that one of the most formidable challenges faced by the children in almost all parts of the world is that of sexual exploitation. In other words, in all the societies there exists a group of people who seem to be looking at the opportunity to sexually exploit the children for the sake of their bodily pleasure.⁴¹ In fact, the vulnerability of the children from such inhuman activities of other has been well recognised in all the important documents and treatises dealing with the issues of the protection and promotion of the child rights. For instance, the constitution of India has also recognised that such an offence could well take place against the interests of

the child and therefore specific and relevant provisions have been made in the constitution to cast a duty upon the state to protect the children from such heinous crimes against the innocent children.⁴¹ However, the constitutional provisions in this regard were found to be vague and indirect as a result of which the perpetrators of injustices against the children were quite a number of times could not be punished as stringently as they should have been for the crime they had perpetrated.⁴²

In view of the inadequacy of the legal arrangements in regard, the parliament enacted the Protection of Children from Sexual Offences (POCSO) Act, 2012. The passage of the act may be considered as a revolutionary step in the direction of the protection and promotion of the rights of the child in view of the fact that it made specific provisions for framing of charges as well as meting out of stringent punishment for those who acted against the established norms of society. The enactment of the act helped in strengthening the existing legal provisions with regard the protection and promotion of the child rights by providing for a number of specific measures such as establishment of the special bodies for the trial of the cases of crime committed against the children. The act has made the crimes of exploitation and abuse of the children from sexual purposes as extraordinary harsh crimes that could be punished with exemplary sentences by the designated courts and other bodies.⁴³ Thus, the act has gone a long way in ensuring the protection and promotion of the child rights along with protecting them from the different kinds of sexual offences, exploitation and abuses. Such a dedicated law for the protection and promotion of the rights of the children

⁴⁰ Y. Vishnupriya, 'Judicial Activism for Protection of Children in India', *Socio-legal Journal*, Vol.37 (1), Jan., 2011, p. 150.

⁴¹ D. D. Basu, *An Introduction to the Constitution of India*, Nagpur: Lexis Nexis Publications, 2017, p. 58

⁴² Manjula Batra, *Protection of Human Right in Criminal Justice*, New Delhi: Deep & Deep Publication, 2015, p. 14

⁴³ P.S. Bawa, *An Imperative of Rights*, New Delhi: New Age Publications, 2012, p. 81

has also tended to act as a kind deterrent for the habitual offenders on the count of the children who might look at this act a tool for meting out severe punishment for them in case they are found to be indulging in such crimes against the children.

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

It is a well known fact that the basic issues pertaining to the protection and promotion of the rights of the children are two fold in nature. On the one hand the children are faced with a number of problems and challenges rooted in the social and economic conditions of the society such as caste discriminations in the different social ambiances where they had to work.⁴⁴ But equally if not more important than these negative challenges to the children, they are also faced with the lack of a number of

positive inducements such as better provisions for education and health that could go a long way in ensuring that they are able to grow as the noble citizens of the country.⁴⁵ Hence, in order to address this basic challenge in the protection and promotion of the child rights, the parliament enacted the right to children to free and compulsory education act in 2009 to ensure that all the children are bestowed with the right to free and compulsory education till the age of 14 years.⁴⁶ This constitutional amendment enjoins upon the state and the government to make sure that no children below the stipulated age can be left out of the system of education and adequate infrastructure must be created to allow the children to have accesses to their right to education in all parts of the country. Thus, the right to education to the children can be taken as a revolutionary measure that the government has taken to make sure that the personality of all the children is allowed to grow and develop to make them valuable asset for the society.

The basic provisions of the right to education act seeks to add the right to education of the children in the chapter on the fundamental rights by adding article 21-A to the constitution. This provision seeks to save the children from the household tyrannies as well as has been suffered by the women by way of domestic violence.⁴⁷ The provision enjoins a duty upon both the state as well as the parents of the child to make sure that the child goes to the school and there must be adequate facilities for him or her to study in the school.⁴⁸ While the duty upon the state is to create sufficient infrastructure by way of the schools and the teachers, the parents are tasked with the responsibility to make sure that they are able to send their wards to the school with great efforts.⁴⁹ The provisions for the free and compulsory education to the children may be taken as landmark even in the history of the country to secure the positive inducements for the children in polishing their personality

⁴⁴ K.S. Chalam, *Caste-based Reservations and Human Development in India*, New Delhi: Sage Publications, 2017, p. 28

⁴⁵ G.S. Shivkumar and T, Manichander, 'Challenges in Implementing the RTE Act', *Journal of Dialogues on Education*, 2(2), 2013, p. 71

⁴⁶ Uma, 'Right to Education (RTE): A Critical Appraisal', *IOSR Journal of Humanities and Social Science (JHSS)*, 6, 2013, p. 81

⁴⁷ Pratima Chaudhary, *Battered Women: A study of Domestic Violence*, Bhopal: Porvasha Prakashan, 2011, p. 81

⁴⁸ S.Kumar, 'Recent Reforms in Education in India – Achievements and Unfinished Tasks', *International Journal of Social Science & Interdisciplinary Research*, 1(8), 2012, p. 42

⁴⁹ P. Mahapatra, 'Deciphering the Issues and Challenges Related to Right to Education Act 2009: A Critical Study', *International Journal of Advance Research, IJOAR*, 2(5), 2012, p. 23.

and save them from the drudgery of the child labour.⁵⁰ Now much depends on the implementation of this revolutionary measure as in India much of the issues and challenges in the development process relates to the policy implementation rather than the policy formulation as can be seen in the case of the police reforms in the country that has still remained a pipedream despite a lot of efforts have already made in that direction through both the governmental as well as nongovernmental entities.⁵¹

2.1.5 The Prohibition of Child Marriage Act, 2006

One of the very old and persisting problems in the country pertaining to the protection and promotion of the rights of the children could be seen in the form of the child marriage. Conceptually, child marriage may be understood as the marriage of a boy with a girl wither of whom may be a minor at the time of their marriage as per the provisions of the relevant provisions of the Indian penal code and other laws.⁵² The basic reason for the prevalence of the bad conventions such as the child marriage in the country could be seen as a byproduct of the complex historical processes through which the Indian society has reached to its present state of existence. Given the existence of a number of threats to the body of the girls even in as tender ages as that of a child, the parents and other socially conscious people did decided to introduce to the system of child marriage so as to send the girl child off to the place of her husband in order to save her from the threatening eyes of the vultures roaming around in different parts of the society. However, the idea of child marriage could be seen as a curse for the girl child as well as the boy child given the various kinds of social, economic, bodily, physiological, and mental and health related issues attached to the problem. Hence, the demand was made the very beginning to outlaw child marriage in the country in order to save the children age from the pains and agonies accompanied with the baggage of marriage. Consequently, the law prohibiting the marriage of the children was enacted in 2006 to act the formidable legal framework through which the menace of child marriages could be checked in different parts of the country.

The prohibition of the child marriage acts consists of a number of provisions to take care of the complex issues arising out of the traditional practice of child marriages in the country. It begins by outlawing the practice of child marriage as a punishable offence in the country by virtue forbidding the practice in all its forms and textures. But once a child marriage takes place, the act also goes further to make sure that such marriages are nullified as and when brought out to the notice of the law enforcement agencies such as police. In the case of the nullification of the child marriage, the custody of the children involved in the marriage may be handed to their parents to some legally appointed custodians of the children. Further, the act also stipulates stringent punishments for the people involved in the perpetuation of the practice of child marriage by making sure that

⁵⁰ Oxfam India, *Right to Free and Compulsory Education, Delivering the promises of Law*, Oxfam India policy brief, 7, 2013, p. 90

⁵¹ S. Pandey, 'An exploratory study on the apprehensions and implementation of Right to Education Act, 2009', *Journal of Dialogues on Education*, 2(2), 2013, p. 29

⁵² Nirmala Devi and Shruti, 'Reformation of Police: Substantial for Human Rights', in Kumar, Manoj (ed.), *Human Rights: Some concern in India*, Chandigarh: Unistar Publishers, 2012, p. 87

the law enforcement agencies take the issues of child marriages seriously by setting up special cells for the investigation and punishment of the perpetrators of the illegal practice of the child marriage in case the issue takes ugly turn. Thus, child marriage may be considered as an important issue of human rights for which sufficient provisions have been made in the law to deal with such issues.⁵³ Moreover, in contemporary times, the practice of the child marriage has also gone out of favour of the people given the urge of the parents to give their children good education and help them become good citizens as well as successful individuals in their life.

2.1.6 Immoral Traffic (Prevention) Act, 1956

Trafficking of children for various kinds of immoral and illegal activities could be seen as one of the most serious crimes against humanity in contemporary times. Conceptually, the trafficking of the children refers to the forced or deceitful taking away of the children from the place of the regular residence to the areas that are totally unknown or far away from the places of their regular residence as a result of which they cannot either return back to their homes or are not able to defend themselves from the perpetrators of the crime due to the unknown nature of the place. The trafficking is ordinarily carried out an organised gang of culprits or criminals who are into the business of the human trade which spans not only within a country but might also have international racket or spread. The basic purposes for which trafficking of the children takes place are manifold and diverse ranging from the use of the girls as sex slaves to that of the boys as domestic helps and many other such activities that are patently against the physical and mental wellbeing of the children.⁵⁴ That way, the trafficking of the children has emerged as one of the most important issues rocking the discourse of child welfare not only in India but in different parts of the world as well.⁵⁴

The realisation of the issue of the immoral trafficking of children has attracted the attention of the law makers in the country as early as the beginning of the constitution itself. As a result, the Immoral Trafficking (Prevention) Act was passed in 1956 with the intention of providing a fine framework through which the issues of immoral trafficking of the children both girls and the boys could be prevented with strict provisions of the law. After the coming into force of this Act, the cases of immoral trafficking of the girls and boys was considered as an illegal act for which strict action may be contemplated against the committers of the crime. The act not only defines what will constitute the immoral trafficking but also goes to the extent of empowering the law enforcement agencies to take concerted step towards the eradication and prevention of such a heinous crime from the society. Thus, after the implementation of this act, the incidences of the immoral trafficking of the children in the country have gone down drastically. But still the cases of the immoral trafficking of the children are reported from time to time in the media and newspapers. So, what is needed for the total eradication of the practice of the immoral trafficking of the child in the society is good degree of public awareness along with the strict implementation of the relevant rules and regulations that may collectively help in the prevention of the immoral trafficking of the children in the country.⁵⁵

⁵³ Asish Kumar Das, *Human rights in India*, New Delhi: Sarup & Sons, 2017, p. 61

⁵⁴ UNICEF, *Understanding Child Trafficking*, available at: https://www.unicef.org/protection/Textbook_1.pdf, accessed on: 29.01.2018

⁵⁵ Ibid

In sum, the legal framework of the protection and promotion of the rights of children as well as their welfare has been quite strong and comprehensive. Taking clue from the constitutional provisions, a number of legal instruments have been enacted in the country from time to time to provide for such a framework that would in the holistic development of the children in the country. Moreover, the nature and scope of these laws are quite comprehensive and all inclusive in such a way that they do not leave out any of the aspects of the child welfare and provide for the better system through the protection and promotion of the rights of the children could be ensured in the society. In other words, the scope of these laws is such that they take care of both the negative as well as positive aspects of the welfare of the child.⁵⁶ By providing for a number of preventive laws, these instruments provide the state and law enforcement agencies a vast set of powers through which they can make sure that the perpetrators of the crime against the children are brought to the book and such crimes can be prevented. On the other hand, the positive enactments such as the right to education act has gone a long way in ensuring that the children are provided with as basic a right as education in a universal and effective manner so as to secure a bright future for the children in the country.

2.2 Institutional Arrangements

In order to provide for the effective implementation of the laws and constitutional mandate with regard to the protection and promotion of the rights of the children and to secure their holistic welfare, a number of institutions and organisations have been created in the country over the years at different levels. These organisations have been created with the view to act as the dedicated bodies for taking care of the different aspects of the protection and promotion of the rights of the children apart from looking after the various issues and challenges faced by them in the course of their life. The nature of these institutions or organisations is such that they are supposed to act as the dedicated bodies with the focus on one or the other aspects of the welfare of the children. But majority of the institutions and organisations are in the nature of the general purpose organisations that work on the concept of taking the welfare of the child in a holistic manner and look into the issues and concerns of the children as the general idea of child welfare.⁵⁷ However, these organisations work in a very coordinated and concerted manner with each other in such a way they are not found to be working at the cross purposes with each other and thereby sabotaging the basic purposes for which they have been set up after a lot of consideration and spending of a lot of resources.

2.2.1 Ministry of Women and Child Development

At the apex of the organisational structure for the protection and the promotion of the rights of the child and ensuring their welfare stands the ministry of women and child development. It is patterned on the design of the other ministries of the government of India with the aim of securing the development of the women and children in the country. The basic purpose for clubbing together of the two subjects of women and children in the realm of the same ministry is the fact that physiological and bodily needs and requirements of the one is

⁵⁶ Asha Bajpai, *The Legislative and Institutional Framework for the Protection of Children in India*, IHD-UNICEF Working Paper Series No. 5, New Delhi: Institute for Human Development and UNICEF, 2010, p. 17

⁵⁷ Ibid, p. 31

dependent on the supply and support system of the other. For instance, from the time of taking genesis in the womb of the mother a child remains dependent upon the support and supply system of his or her mother in order to remain alive and healthy during the time of its stay in the womb of the mother. Even after getting birth, the child remains in such a vulnerable situation that it is the milk of the mother and her other care that provides it with the basic nutrients and other requirements that keep it viable amidst the external threats and dangers. Hence, it has been conceptualised by the policy makers in the country that the issues of the welfare of both the women as well as the children needed to be clubbed together so as to help the ministry take concerted measures to help the policies and programmes provide maximum benefits to both the women as well as the children.⁵⁸

The organisational structure of the ministry is such that it is divided into two distinct departments each taking care of the issues of the women and the children in a distinct manner. The ministry is headed by a political representative of the union cabinet in the form of the minister of the women and the child welfare who is usually a member of the cabinet. He acts as the political lamp post of the ministry who keeps on enlightening the activities, vision and perspectives of the ministry on the issues of the welfare of the women and the children. The administrative head of the ministry is the secretary of the women and child welfare who is usually a senior member of the Indian administrative service. The appointment of the secretary as the administrative head of the ministry is a conventional practice in the country to make sure that the system works in a coordinated and cooperative manner. Under the secretary, there exists a plethora of other divisions, sections and bureaus in the ministry that work as in charge of distinct activities in the field of women and child welfare. Apart from the head office based agencies, the ministry also consists of a number of field offices that are in charge of the implementation of the plans and programmes envisaged for the welfare of the child and the children.⁵⁹ Thus, the ministry stands at the apex of the administrative arrangement for the welfare of the women and children in the country.

On the whole, the ministry is charged with three distinct functions or responsibilities that it performs through its vast network of agencies and subordinate bodies. At the very outset, the ministry is the nodal agency for the formulation of all kinds of policies, programmes and plans pertaining to the issues of the women and child welfare in the country. Though this activity of the ministry is discharged in consultation with a number of other important stakeholders, the final decision on such issues are taken by the ministry. The decisions of the ministry are placed before the cabinet and after approval of the cabinet such policies and programmes become the mainstay of the function of the welfare of the women and children in the country. Apart from framing the policies and programmes, the ministry is also responsible for the implementation of these policies and programmes in different parts of the country in a common format with same degree of efficiency and effectiveness. In this task of the implementation of the policies and programmes, the ministry depends upon the vast network of the agencies and the field bodies that remain the pivot of the implementation of different schemes. Finally, the ministry is also responsible for the evaluation and assessment of the status of the

⁵⁸ Government of India, *Annual Report, (2016-17)*, available at:

https://wcd.nic.in/sites/default/files/FINAL%20WCD_AR_English%202016-17.pdf, accessed on: 10.10.2018

⁵⁹ Ibid

implementation of different schemes so as to be aware of the status of the working of the different schemes for welfare of the women and the children in different parts of the country.

2.2.2 National Commission for Protection of Child Rights

Given that the ministry of women and child welfare works as the general purpose body for the welfare of both the women and the children, there was felt the need for the creation of dedicated machinery that could focus only on the issues of the protection and promotion of the rights of the child in such a way that the overall welfare of the children could be ensured. Thus, after extensive deliberations and wide consultations, and towards the fulfillment of the international obligations for the creation of dedicated machinery for the welfare of the children, the National Commission for the Protection of the Child Rights (NCPCR) was established in the country in 2005 under an act of parliament.⁶⁰ The decision to form the commission type of body for the protection and promotion of the child rights was taken with the view to evolve a comprehensive and all encompassing framework of child welfare. In other words, the creation of a commission type body ensured that the commission would consist of a number of members who would be in charge of different aspects of the welfare of the children in such a way that no aspect of the protection and promotion of the child rights could be left outside the purview of the commission. Thus, NCPCR has been designed as the apex, autonomous and specialised agency to look into the diverse issues in the protection and promotion of the rights of the children in a professional, comprehensive and passionate manner in the country as per the international standards.

The basic mandate of the NCPCR is to make sure that all the laws, policies, guidelines, programmes and activities to the rights of the children or the welfare of the children are in consonance with the broader perspective of child rights provided for in the constitution of India along with the United Nations Convention on the Child Rights. It comes under the administrative jurisdiction of the ministry of women and child welfare to act as the custodian of all the visions and perspectives on the welfare of the child in the country. In discharge of its activities, the commission follows the rights based approach to the issue at hand. In other words, it takes the rights of the child enshrined in the constitution of India as well as the international instruments as the guiding principles in accordance with which all the other ancillary or supporting policies, programmes, schemes, laws and mandates of other bodies need to be prepared and implemented in the country. It is interesting to note that the commission does not have any direct role to play in the formulation of any policy, promulgation of any law or regulation or evolution or implementation of any policy, programme or scheme with regard to the protection or promotion of the child rights in the country. What it in fact does is to act as the monitoring and overseeing body that keeps an eye on the developments in the country on the front of the child welfare in the country.

⁶⁰ Shantha Sinha, *National Commission for the Protection of Child Rights (NCPCR): The first Six Years (2007-2013)*, available at: <https://ncpcr.gov.in/showfile.php?lid=696>, accessed on: 11.09.2018

2.2.3 Central Adoption Resource Authority

Apart from the NCPCR, another important agency that has gained prominence in the current times with regard to the protection and promotion of the rights of the children is the Central Adoption Resource Authority (CARA). As a matter of fact, adoption of a child has been quite a popular practice not only in India but almost in all parts of the world in view of the prevailing situations of different countries.⁶¹ The need for adoption a child emerges out of two reasons. One, a couple may not have any issue out of the mutual mating of theirs and therefore would be looking for the adoption of a child that may become the part of their family with a view to take care of theirs in their old age. On the other, some people may also go for the adoption a child in the present times due to their inability or unwillingness to get married and still want to have a child who can be a companion of his or her in the times to come. Thus, the need for adoption has been a quite complex system that may take various forms and processes depending upon the need and requirement of the person or persons thinking of going for the adoption of the child. As a result, in most of the countries in the world, the adoption of a child has been an accepted norm of the society that has the support of law as well.⁶²

However, notwithstanding the simplicity of the process of the adoption, there are a number of issues and challenges before the different stake holders in the different stages of adoption of a child. In this context, amongst all, the most ticklish issues arise with regard to the status and the wellbeing of the innocent child who is likely to be adopted by a parent. For instance, once a child gets adopted by a couple, they may not put the child in the best of situations and may go for ill treatment or physical assault on the child. In extreme case, the couple that has gone for the adoption of the child may take the extreme step of exploiting the child for certain reasons or abusing his or her physically. Hence, in order to ward off all such activities or incidents with the adopted child, there was the need to put in place a body that may not only facilitate such adoption but also keep a record of the same and make sure that the child is well treated, well fed and educated and put in the best of the ambience till he or she attains the age of eighteen years. Thus, in acceptance of the arguments of the activists and the scholars, the government of India, decided to set up the CARA as the nodal agency to take care of all the adoption related issues in the country with a view to make sure the wellbeing of the adopted child.

2.3 International Framework

In addition to the national frameworks set up by different countries in the world, there also exists a very wide, vibrant and sound framework for the protection and promotion of child rights at the international level as well. In this regard, it is interesting to put the things in perspective as to what needs to come first, national or international, in the discourse of protection and promotion of child rights in the world. There is no denying the fact that in the most part the issues of the protection and promotion of the rights of different sections of the society become the prime responsibility of the national governments in which the international community has to play either no or very minimal role. But when we look at the trajectory of the evolution of different frameworks through which the concerns and pursuits for the protection and promotion of different kinds of

⁶¹ Government of India, *Role of Judiciary and Court Procedure for Adoption: CARA*, New Delhi: Ministry of Women and Development, 2015, p. 42

⁶² Ibid, p. 52

rights of vulnerable groups of people needed to be protected, the national governments have been found to be wanting in their efforts. Rather, a number of national governments have tried to turn the tide in different direction by oppressing or suppressing the rights of the people. It is in this context that the international framework assumes critical significance in the protection and protection of rights of different sections of society as it seeks to provide a method and system through which the things could be conceptualised and implemented.⁶³

Insofar as the protection and promotion of the child rights are concerned, it is true that the majority of the countries in the world already had the vision and blueprint for the policies and programmes for the welfare of the child. But two major challenges had been besetting the countries that needed to be sorted out before a standard format for the protection and promotion of the rights of the children could be evolved and implemented. One, the issues of the rights of the children in different countries had been conceptualised in accordance with the cultural and societal perspectives of each and every society. Two, there also existed a lot of divergence and differences amongst the different countries as to what constitutes the welfare of the children and what could have been the best ways to secure that. Hence, it was felt at the global level to evolve a standard framework for the protection and promotion of the rights of the child in such a way that that can act as the international standard setting document which all other countries in the world could follow and emulate in drafting their own vision documents on the protection and promotion of the child rights. Thus, the international framework of the rights of the children primarily act as the benchmark document that need to serve the human beings in all parts of the world to draft their national perspectives on the protection and promotion of the rights of the child irrespective of the cultural and societal variations.

2.3.1 Universal Declaration of Human Rights

The international regime of human rights in general and the group rights in particular revolve around the edifice of the colossal Universal Declaration of Human Rights (UDHR) adopted in 1948 by the United Nations General Assembly to act as the benchmark document that would guide the world by setting certain basic or fundamental principles around which the global discourse of human rights would move in the world. When we look at the background in which the need and the imperatives of the UDHR was felt, it becomes clear that the UDHR was the creation to put the world on a different trajectory of peace and human rights amidst the ruins and destructions caused by the two successive world wars. Thus, even before the world war was over, side by side of the deliberations of the different countries regarding the creation of a new body of global nature that would replace the archaic League of Nations, a group of people under the leadership of Eleanor Roosevelt was also deliberating on the issues, challenges, imperatives and the perspectives through which a new document can be put before the United Nations and later the world to show them how and what kinds of rights need to visit their national discourses of human rights.⁶⁴ Thus, after the prolonged deliberations of the committee, the UDHR was placed before the United Nations General Assembly that very readily agreed to the principles enshrined in it and gave its approval to act as the guiding principles of human rights in the

⁶³ Brian K. Gran, 'An International Framework of Child Rights', *Annual Review of Law and Social Science*, July 2017, p. 16

⁶⁴ Gordon Brown, *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a changing world*, New York: Open Book Publishers, 2016, p. 19

world.

Actually, UDHR is a non-binding international declaration that has only moral value. It neither casts any country any responsibility for the initiation of concerted actions for the sake of implementing the rights enshrined in it nor it calls upon them to create a set of institutions or bodies that can be the nodal agencies for the protection and promotion of human rights in the world. In other words, the UDHR is an international instrument of the moral value. It consists of the different loftier principles and ideals that need to underline the national frameworks or declarations of the human rights in the world. For instance, its opening article exhort the people in different parts of the world with the ideal that all the people in the world are born free and equal in life and dignity.⁶⁵ It thus sets into public discourse the four distinct ideals regarding the value of the peoples in different countries. It thus debars any kind of distinction amongst the people in terms of the different human beings as it calls them to be born free and equal. Further, the life and dignity of each and other human being needs to be recognised as incorrigible principle that must be protected in all circumstances come what may. Thus, the principles enshrined in the UDHR get automatically transported into the discourse of the child rights in different parts of the world and need to underline the national instruments of child rights.

2.3.2 Convention on Child Rights

For a long period of time after the adoption of the UDHR, the global discourse on child rights remained imbued with the spirit of the open and transparent regimes of human rights. But two problems arose in the due course of time that necessitated the global community for the adoption of the Convention on Child Rights that has become the mainstay of the global concern for the protection and promotion of the rights of the child.⁶⁶ One, given the voluntary and optional nature of the UDHR, many countries in the world failed to imbibe the spirit of the document and therefore could not succeed in translating the letter and spirit of the UDHR in their national frameworks for the protection and promotion of the rights of the child. Secondly, since the closing years of the seventies, a new wave in the discourse of human rights had begun. It had argued for the evolution of the third generation of rights rooted in the parlance of the group rights. In other words, from that time it was argued that the general frameworks of the human rights are not competent mechanism for the protection and promotion of the rights of different sections of the society particularly the ones that are in a vulnerable situation in the society. Hence, demand was made for the framing of the dedicated frameworks through which the protection and promotion of groups rights of the vulnerable communities such as women, children, old age, disable and likewise sections of society could be protected.

As a result, the historical convention on child rights (CRC) was framed by a group of experts drawn from different countries to be placed before the United Nations General Assembly for its adoption in 1989. It came in practice in 1990. After its adoption by the General Assembly, now CRC stands as the pivot of the international framework of the protection and promotion of the child rights in different parts of the world. As regards, the practical value of the CRC vis-a-vis the UDHR, it needs to be emphasised that the CRC stands on a better pedestal than the UDHR. The basic reason for this is that while the UDHR has been a declaration for

⁶⁵ Ibid

⁶⁶ Brian K. Gran, 'An International Framework of Child Rights', *Annual Review of Law and Social Science*, July 2017, p. 19

the other countries to follow and observe in the drafting of their national frameworks of municipal law, the CRC is a convention that has to be ratified and accepted by different countries for their implementation as part of their national legal framework. Thus, after its adoption, the CRC was accepted and ratified by a number of countries in the world like India in such a way that they agreed to amend their national or municipal laws to make them in sync with the requirements and imperatives of the protection and promotion of the child rights.⁶⁷ This convention consists of a long list of rights and opportunities that need to be provided to the children in all the countries of the world in order to make them realise the dream of making their children the true assets for a bright future of their people.

2.3.3 United Nations Children's Fund

A major international instrument in the realm of the protection and promotion of child rights in the world has been the United Nations Children's Fund (UNICEF). The basic purpose behind the creation of the UNICEF has been the realisation in different parts of the world that the issues lying behind the protection and promotion of child rights are the ones that are quite capital intensive in nature. For the proper initiation and implementation of these issues, there would be need for a large quantum of money that has usually been missing from the kitty of the developing countries.⁶⁸ Hence, it was argued by them that the international framework for the protection and promotion of child rights would remain hollow and sterile unless matched with sufficient financial resources for the countries that are really in need of financial support for putting in place the institutions and processes critical in the formulation and implementation of child welfare policies. Such a situation was particularly difficult in a number of African countries that had not only been marred by the long drawn civil wars but also the fact that in such wars, the main warriors on both the sides had been none other than the children in the age group of ten to fifteen years. But they cannot be weaned away from the lucrative business of war unless they are offered some concrete gains by way of joining the peaceful mainstream of their countries.

Before its current nomenclature as the UNICEF, it was known as the United National International Children's Emergency Fund. It was renamed as the UNICEF in 1946 with the objective of clarifying its purpose more distinctively than before. The basic purpose of the UNICEF is to provide the basic needs of the children such as food, medicines and other existential support to the children in need of such support due to the difficult situations in which they are. Since its formation the UNICEF has been acting as the frontline organisation for the purpose of child welfare. It has been providing the much needed assistance and support to the children particularly in Africa and other strife torn regions of the world. Despite being one of the specialised agencies of the UN, the UNICEF does not have much economic support from the UN system and has to depend upon the contributions of different countries as well as donor agencies for much of its corpus fund. For a number of years, the UNICEF has been in the line of fire of the United States government for its pioneering role in the protection and promotion of the child rights in different parts of the world.⁶⁹ Nevertheless, the UNICEF has indeed been the pivot of the international framework for the protection and promotion of the child rights

⁶⁷ Ibid

⁶⁸ Chris Brezier, *UNICEF Innocenti Report Card: Building the Future: Children and the Sustainable Development Goals in the Rich Countries*, Paris: UNICEF, 2007, p. 17

⁶⁹ Ibid

and has been offering all sorts of assistance and support to all the countries where the children are in distress.

2.4 Regional Arrangements

The international arrangements for the protection and promotion of child rights have also been supplemented by the existence of a number of regional arrangements on the subject. As a matter of fact, the rise of such a large number of the regional or the national frameworks on the protection and promotion of rights of the children have arose in the wake of the international thrust towards the adoption of a global instrument for the welfare of the children. As has already been pointed out, the discourse of child rights has been marked by the a number of cultural, societal, religious or other primordial factors that impart distinct traits or characteristics to the discourse of child rights that sometimes come into conflict or contravention with the global prescriptions. Hence, when it came for the different countries to abide by the international perspectives, they found it better to evolve their own systems of child rights that was considered to be more in sync with the cultural and societal distinctiveness of the particular regions.⁷⁰ For instance, it has been argued sometimes that the international frameworks on child rights or for that matter any other rights are marked dominantly by the prevalence of the European or the American perspectives of those rights that normally do not reflect the perspectives of the Asian, African and the Latin American countries. Hence, in order to put the things in perspective and make the global framework of child rights more inclusive and acceptable, the more and more regions came out with their frameworks.

In the regional frameworks of the rights of the child, the important ones may be seen in the form of the European and the African frameworks that have come in the form of the charters of the rights of the children in accordance with their particular understanding and appreciation of the issues and challenges critical in the understanding of the rights of the child. But what is more interesting is the fact that the adoption of the European framework of the child rights did not make them desist many other countries to evolve their national frameworks for the protection and promotion of child rights. Almost similar if not identical moves could also be seen in the countries of the north America such as Canada and Mexico where the national frameworks on child rights have been drafted over and above the regional or the global frameworks. Nevertheless, the regional frameworks have served two basic purposes in the course of their implementation. One, their adoption in particular regions has made the countries of the region accept these frameworks with much complain or grudge as they have been adopted by them only. Two, they offer a scope for the comparative study of the perspective of different regions or the countries with regard to the appreciation or understanding of the issues and challenges in the way of the protection and promotion of the child rights that may allow for a more inclusive and practical framework of child rights in the world.⁷¹

⁷⁰ Ibid

⁷¹ Ibid

2.4.1 European Convention on Human Rights

European Convention on Human Rights (ECHR), the first international human rights agreement to establish supervisory and enforcement machinery, obliges States Parties to secure everyone within their jurisdiction the rights and freedoms it sets forth (article 1). The ECHR uses throughout the term “everyone (or, where appropriate, “no one”); as a result, children have successfully brought suit either on their own behalf or as co-applicants with their parents.”⁷² 163 Specific references to the young are found in two articles of the ECHR and concern legal proceedings. “Article 5(1)(d), on the lawful procedures for depriving a minor of his or her liberty, permits the lawful detention of a minor for the purpose of educational supervision or for bringing him before the competent legal authority. Article 6(1) stipulates that everyone is entitled to a fair and public hearing and that judgment will be pronounced publicly, but the hearing may be held in private when required by the interests of juveniles or the protection of the parties’ private life. Protocol No. 7 to the ECHR provides that while spouses enjoy equality of rights and responsibilities in their relations with their children, this does not prevent States “from taking such measures as are necessary in the interests of the children.”⁷³

2.4.2 African Charter on Human and People’s Rights

The African Charter on Human and People’s Rights (ACHPR) (also known as the Banjul Charter) encompasses civil and political as well as economic, social, and cultural rights. In regard to children, it emphasizes the rights of the family and of duties towards the family rather than the rights and duties of individual family members, which can be viewed as a reflection of African customary law. Thus, the ACHPR makes it incumbent on the individual to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need (article 29(1)).⁷⁴ The ACHPR does not set forth any additional specific rights for children, relying instead on existing international protections regarding children’s rights (in article 18(3)).” 165 As in other international human rights documents, however, rights in the ACHPR are mentioned in connection with “the individual” or “every individual.” The Protocol to the “African Charter on Human and Peoples’ Rights on the Rights of Women in Africa makes numerous specific references to children, and to girls in particular. The Preamble calls for the condemnation and elimination of “any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls.” State should implement legislative contrary to recognized international standards, and take measures against them, such as rehabilitation of the victims and granting of asylum to those at risk (article 6(b-d)). States Parties should afford effective protection to women and children in emergency and conflict situations (article 11(4)) as well. In furtherance of the right to education and training, all appropriate measures should be taken to eliminate discrimination against women and girls, with specific positive action to be taken to promote girls’ education

⁷² Gordon Brown *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a changing world*, New York: Open Book Publishers, 2016,

⁷³ Ibid

⁷⁴ Brian K. Gran, 'An International Framework of Child Rights', *Annual Review of Law and Social Science*, July 2017, p. 92

and training “at all levels and in all disciplines.”⁷⁵

2.4.3 American Convention on Human Rights

The American Convention on Human Rights (ACHR) obliges States Parties to respect the rights and freedoms recognized in its provisions and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of social condition. The term “person” used in the ACHR means “every human being” (article 1). Thus, every person has the right to a legal personality, to life, to humane treatment, to personal liberty, and to a fair trial, among many other rights set forth.”⁷⁶ However, parents or guardians “have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions (article 12(4)), and public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence, notwithstanding the right to freedom of thought and expression (article 13(4). The ACHR stipulates that provision must be made for the protection of children “solely on the basis of their own best interests” when a marriage is dissolved and that equal rights must be recognized by law for children born in and out of wedlock (article 17(4) & (5)). Everyone also has the right to a given name and to the surnames of one or both parents (article 18).

2.4.4 Hague Conventions on Jurisdiction, Etc., Relating to Adoptions

There are a number of Hague conventions relating to different aspects of the children and child rights. The 1996 Convention provides a structure to resolve disputes over contact and custody issues when parents are separated and living in different countries and has uniform rules to determine which country’s authorities are competent to take the necessary protection measures.” Article 2 stipulates that the Convention is applicable to children from the moment of their birth until they reach the age of 18 years. Provisions on recognition and enforcement ensure that primacy be given to decisions taken by the authorities of the country where the child has his or her habitual residence, reinforcing provisions of the 1980 Hague Convention.⁷⁷

The “Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions (1965 Convention), the first Hague Convention on the issue, apparently has no contracting parties at present.”⁷⁸ The Convention is applicable to all international adoptions, not only where a child originated from another country but also to adoptions where the only international aspect is the foreign nationality of the child.” The authorities are not to grant an adoption “unless it will be in the interest of the child. Before granting an adoption, the authorities should conduct “a thorough inquiry” relating to the adopter(s), the child, and the child’s family. The inquiry should be carried out “as far as possible ... in cooperation with public or private organizations qualified in the field of inter-country adoptions” and with the help of specially trained or

⁷⁵ Ibid

⁷⁶ Chris Brezier, *UNICEF Innocenti Report Card: Building the Future: Children and the Sustainable Development Goals in the Rich Countries*, Paris: UNICEF, 2007, p. 17

⁷⁷ Ibid

⁷⁸ Eva Laftman, *International and Regional Child Rights Mechanism*, Stockholm: Save the Children, 2011, available at: https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Save_the_Children_Guide_Monitoring_Mechanisms_2011.pdf, accessed on 21.12.018

qualified social workers (article 6). Furthermore, the national law of the child is to be applied in decisions pertaining to consent and consultation issues, rather than that of the adopter, family, or spouse (article 5, paragraph 1). The 1965 Convention also allows States Parties to make a declaration at the time of signature, ratification, or accession but revocable at any time, specifying provisions of domestic law prohibiting adoptions founded upon certain specified grounds, e.g., the existence of a previous adoption of the child or the age of the adopter and that of the child (article 13).

2.4.5 Hague Convention on the Protection of Children in Inter-country

This convention applies to the cases of the inter country adoption of the children. In accordance with the child's fundamental rights; to establish a system of safeguards to avoid abuses such as trafficking in children; and to secure recognition in States Parties of adoptions made in accordance with the Convention (article 1). The underlying principle of the 1993 Convention is that although it is difficult to define the best interests of the child, the child's interests should always take priority over those of the prospective adopters, but the application of this principle has proved problematic." The 1993 convention emphasizes that the authorities have a responsibility to guarantee, considering the child's age and level of maturity, that they receive appropriate care and protection "counseled and informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required; that consideration has been given to the child's wishes and opinions; that the child's consent to the adoption has been given freely, in the required legal form, and in writing; and that consent has not been induced by payment or compensation of any kind (article 4(d)). Information on the child's origin, in particular the identity of the parents as well as the medical history, should be preserved, but access by the child to that information is permitted only insofar as it is allowed by the law of the State where it is held (article 30). Personal data gathered or transmitted under the 1993 Convention's provisions is to be used only for the purposes for which they were gathered or transmitted, without prejudice to article 30 (article 31).

2.4.6 Hague Convention on the Civil Aspects of International Child Abduction

This convention governs issues related to parental kidnapping or the removal of children under the age of sixteen across international borders and involving the jurisdiction of different countries' courts. Its stated objectives are to secure the prompt return of children wrongfully removed to or retained in any contracting state and to ensure that the rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states (article 1). Removal or retention of a child is deemed wrongful if: a) it is in breach of custody rights attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and b) at the time of removal or retention those rights were exercised, or would have been but for the removal or retention (article 3, paragraph 1).

2.4.7 The European Convention Concerning the Custody of Children

The European Convention on the Recognition and Enforcement of Decisions Concerning the Custody of Children (the Luxembourg Convention) seeks to protect the rights of custody and access to children in the international context. It calls upon the central authorities designated by States Parties to provide free, prompt, non-bureaucratic assistance in determining the whereabouts and restoring custody of an improperly removed child.” They must also avoid prejudice to the interests of the child or of the applicant in restoring child custody, among other requirements. The Luxembourg Convention uses the term “improper removal” to refer to “the removal of a child across an international frontier in breach of a decision relating to his custody” given in a State Party and enforceable in that State (article 1(d)), in contrast to the 1980 Convention’s term wrongful removal or retention of a child and the CRC’s term as the illicit transfer and non-return of children abroad. Convention spells out the basic human rights that all children, regardless of their sex, race, religion, cultural or socio-economical background, language, ability, everywhere have. All children have the right to: Life, survival and development; participation fully in family, cultural and social life; Registration, name, nationality and care; Preservation of identity; Live with their parents; Family reunification; Expression of views including respecting these views; Freedom of expression, thought, conscience, religion, association; Privacy; Access to information that is important to their health and wellbeing, including the mass media; Access to quality health care including safe drinking water and food; Assistance from government if affected by poverty or in need; Standards of living, enough to meet their physical and mental needs.

Other rights of the children include: governmental help when families cannot provide for appropriate living standards (food, clothing, housing); Free, primary education; Leisure, relax and play; Legal help and fair justice system and along with every child shall be protected from: harmful influences, abuse and exploitation; kidnapping and abduction; all forms of violence, mistreatment, abuse and neglect; any form of discipline involving violence; child labour; drug abuse; sexual exploitation; abduction, sale and trafficking; any form of exploitation; detention and punishment in a cruel and harmful way including separation from families, sharing cells with adults, sentence to death or life imprisonment; war and armed conflicts including recruitment for armed conflicts. There has some special protections for vulnerable children: Children deprived from family, and refugee children have the right to special care, protection and assistance, children with disabilities have the right to special care and assistance so that they can fully participate in live, minority or indigenous children have the right to practice their own culture, language and religion and children, who have been abused, neglected and/or exploited have the right to special help to physically and psychologically recover and reintegrate in society.

Chapter-3

WELFARE PROVISIONS FOR CHILDREN UNDER THE CONSTITUTION AND NATIONAL POLICIES OF INDIA

3.1 Introduction

The Constitution is a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government within the State and declares the principles by which those organs must operate. The Constitution refers to the whole system of the governance of a country and the collection of rules which establish and regulate or govern the Government. In our country, we have a written Constitution, which has been given by the people of India to themselves.⁷⁹

3.2 Historical Development of the Constitution

The Constitution of India, unlike many others, was not born out of a political uprising but rather emerged from extensive research and discussions among distinguished representatives of the people. This unique origin underscores the importance of reviewing the chronological sequence of both official and unofficial endeavors by nationalist leaders, which ultimately culminated in the formation of the Constitution of India.⁸⁰

The Constitution of India Bill, 1895: This draft Bill represented the first non-official attempt at drafting a Constitution for India. There is no clear evidence about its authorship. However, Mrs. Annie Besant, who described it as the Home Rule Bill for India and a forerunner of later attempts in that direction, thought that it was probably issued under Lokmanya Bal Gangadhar Tilak's inspiration. It contained two provisions relating to the education for children which are as follows: ⁸¹ (i) It provided that the State Education shall be free in the Empire. (ii) Primary Education shall be compulsory in the Empire.

The Commonwealth of India Bill, 1925: The Commonwealth of India Bill, 1925 also contained a 'Declaration of Rights' which provided 'provision for free elementary education'.⁸² So, we can say that this provision was incorporated for the educational rights of the children. But again this was too a non-official attempt.

The Nehru Committee Report, 1928: In November, 1927 the British Government appointed a Commission under the Chairmanship of Sir John Simon which is popularly known as "Simon Commission" in the history. The Simon Commission was appointed for the purpose of inquiring into the working of system of Government, the growth of education and development of representative institutions in British India and reporting as to what extent it is desirable to establish the principle of responsible Government in India. The Indians condemned the appointment of an all-white Simon Commission and Lord Birkenhead, the Secretary of State for India, while

⁷⁹ B.R. Kapoor v. State of Tamilnadu, AIR 2001 SC 3435.

⁸⁰ D. D. Basu, Commentary on the Constitution of India, Vol. 1 (Wadhwa & Company, Nagpur, 8th ed., 2007) at 27.

⁸¹ B. Siva Rao, (ed.), The Framing of India's Constitution: Select Documents, Vol. 1 (Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2004) at 5-7.

⁸² Id., at 43-44.

justifying the exclusion of Indians from the Commission, challenged them to produce an agreed Constitution and submit the same to the British Parliament. This challenge was accepted by the Indians and an All Parties Conference was held in Bombay on 19th May, 1928. This Conference was presided over by Dr. M. A. Ansari. This Conference appointed a Committee under the Chairmanship of Pandit Motilal Nehru to consider and determine the principles of a Constitution for India. Sir Tej Bahadur Sapru, Sir Ali Imam, Mr. M. S. Aney, Sardar Mangal Singh, Mr. Shuaib Qureshi, G. R. Pradhan and Subhash Chandra Bose were its members. The Committee produced a report which has gone down in the history as the 'Nehru Report'. The Nehru Report was submitted on 10th August, 1928. The Constitution contained in the Report is also known as the Swaraj Constitution. Apart from various provisions, the Nehru Report enumerated 19 fundamental rights which were to be embodied in the statute. 3 out of such 19 fundamental rights were concerned with welfare of the children, which are as follows:⁸³

(i) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institution, maintained or aided by the State and such right shall be enforceable as soon as due arrangements shall have been made by competent authority.

(ii) No person attending any school receiving state-aid or other public money shall be compelled to attend the religious instructions that may be given in the school.

(iii) Parliament is tasked with enacting legislation to ensure the health and productivity of all citizens, including the provision of a fair wage for every worker, safeguarding motherhood, promoting the welfare of children, and addressing the economic challenges of old age, illness, and joblessness. However, the Simon Commission, which presented its findings in 1930, did not endorse the widespread call for the enumeration and guaranteeing of fundamental rights.

3.3 The Fundamental Rights and Children

A legal right is an interest which is protected by law and is enforceable in the courts of law. While an ordinary legal right is protected and enforced by the ordinary law of the land, a fundamental right is one which is protected and guaranteed by the written Constitution of a State. Our Constitution makers, wise and sagacious as they were, had known that the India of their vision would not be reality if the children of the country are not nurtured and educated. The Constitution makers reflected their anxiety to protect and safeguard the interest and welfare of the children by incorporating various provisions in the shape of fundamental rights contained in the Part III of the Constitution.⁸⁴

Special Provisions for Women and Children [Article 15(3)] Article 15 of the Constitution provides for prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.⁸⁵ But Article 15(3) provides that State can make special provisions for women and children.⁸⁶

⁸³ V. D. Mahajan, Constitutional History of India, (S. Chand & Company, New Delhi, 1967) at 129- 133.

⁸⁴ Supra note 2 at 590.

⁸⁵ Art. 15 (1). Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. — The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them

⁸⁶ Art. 15(3). Nothing in this article shall prevent the State from making any special provision for women and children

The right ensured by Article 15(1) is granted to an individual citizen and protects them from being discriminated against in terms of the rights, privileges, and immunities that they are entitled to as citizens in general. As per the Oxford Dictionary, "discriminate against" refers to making unfavorable distinctions or treating someone unfavorably compared to others. The discrimination involves an element of unfavorable bias and it is in that sense that the expression has to be understood in this context. If such a bias is disclosed and is based on any of the grounds mentioned in Article 15, the law will be struck down as being violative of the constitutional prohibition, unless it is saved by Article 15(3) or (4). So, reading clauses (1) and (3) together it will follow that while there can be no discrimination in general on the ground of sex, special provisions in the case of women and children are permissible. The language of clause (3) is in absolute terms and does not appear to restrict in any way the nature or ambit of special provisions which the State may make in favour of women and children.⁸⁷

Right to Life and Personal Liberty (Article 21): Article 21 of the Constitution provides for protection of life and personal liberty.⁸⁸ Justice P. N. Bhagwati in *Maneka Gandhi Vs. Union of India* held that Article 21, though couched in negative language confers on every person the fundamental right to life and personal liberty. Our judiciary, especially the honorable Supreme Court has given wider interpretation to Article 21 of the Constitution. In *Bandhua Mukti Morcha v. Union of India and others*, The Supreme Court held that the "procedure established by law" has interpreted to mean "due process of law." In this case Article 21 was interpreted in the context of problem of child labour. The Apex Court held that the bane of poverty is the root of child labour and the children are being subjected to deprivation of their meaningful right to life, leisure, food, shelter, medical aid and education. Every child shall have, without any discrimination on the ground of caste, birth, colour, sex, language, religion, social origin, property or birth alone, right to health, well-being, education and social protection. Even Clauses (h) 44 and (j) 45 of Article 51A of the Constitution were interpreted from children's point of view. The Court held that Article 51A (h) and (j) enjoins that it shall be the duty of every citizen to develop scientific temper, humanism and the spirit of enquiry and reform and to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavour and achievement. Unless facilities and opportunities are provided to children, in particular those handicapped by social, economic, physical and mental disabilities, the nation stands to lose the human resources and good citizens. It is therefore, the duty of the State to provide facilities and opportunities to the children driven to child labour to develop their personality as responsible citizens.⁸⁹

⁸⁷ V.N. Shukla, *Constitution of India* (Eastern Book Company, Lucknow, 1998) at 71-75.

⁸⁸ Art. 21. Protection of life and personal liberty—No person shall be deprived of his life and personal liberty except according to procedure established by law.

⁸⁹ Part IVA of the Constitution: Fundamental Duties

Prohibition of Employment of Children in Factories, Mines etc. (Article 24)

Article 24 of the Constitution provides for prohibition of employment of children in factories, mines etc.⁹⁰ In Draft Constitution this Article was numbered as Article 18 and discussion on this Article took place on 3rd December, 1948 in the Constituent Assembly. Amendment No. 562 on this Article was standing in the name of Prof. Shibban Lal Saksena who was from United Provinces but he did not move that Amendment but spoke on this Article. His views regarding this Article were: “Sir, I am very glad that this article has been placed among fundamental rights. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

3.4 The Directive Principles of the State Policy and Children

Importance of Directive Principles of State Policy in the context of child rights was considered at length in *Bandhua Mukti Morcha's* case,⁹¹ wherein the Supreme Court observed: “The child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment, which is conducive to his social and physical health, is assured to him. Every nation, developed or developing, links its future with the status of child. Childhood holds potential and also sets the limit to the future development of the society. Children are the greatest gift of humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of their children. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood—socially, economically, physically and mentally—the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and the good citizenry. The Founding Fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the need of its best development. Dr. B. R. Ambedkar, who was far ahead of his time and in his wisdom, projected these rights in the Directive Principles including children as beneficiaries. Their deprivation has deleterious effect on the efficacy of the democracy and rule of the law.”⁹²

⁹⁰ Art. 24. Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment

⁹¹ *Supra* note 43.

⁹² *Id.*, Para 4.

Protection to Children against Exploitation [Articles 39 (e) & (f)]

The Constitution of India envisages the establishment of a new social order based on equality, freedom, justice and dignity of the individual. Article 39 of the Constitution provides for certain principles of policy to be followed by the State. Article 39 (e) of the Constitution enjoins that the State shall direct its policy that tender age of children is not abused⁹³. Similarly, Article 39 (f) provides protection to children against exploitation and they should be given opportunities to develop in a healthy manner.⁹⁴

Early Childhood Care and Education to Children below the Age of Six Years (Article 45) Article 45 of the Constitution provides for early childhood care and education to children below the age of six years. Article 45 was substituted by the Constitution (Eighty-sixth Amendment) Act, 2002, because right to education has now been made a fundamental right under Article 21A of the Constitution. So, now it is a directive upon the State to provide early childhood care and education for all children till they complete the age of six years.

3.5 Fundamental Duties and Children

The fundamental duties were added by the Forty-second Amendment of the Constitution in 1976 by adding a new Part IV A⁹⁵ and a new Article 51-A in the Constitution. Since these duties are imposed upon citizens and not upon the State hence legislation is necessary for their implementation. Duties towards children took a new dimension when a new clause (k) was added in Article 51A in the Constitution by the Eighty-sixth Amendment in 2002.

Fundamental Duty towards Children in Constitution: Article 51A (k)⁹⁶ of the Constitution places a responsibility on parents or guardians to ensure educational opportunities for their children aged between six and fourteen. This duty did not exist prior to this amendment. The researcher argues that while Article 21A grants children the fundamental right to free and compulsory education, it also imposes a corresponding fundamental duty on parents or guardians to facilitate education for their children or wards within the specified age range.

Educational Rights of Children Belonging to Linguistic Minorities Article 350A of the Constitution provides for facilities for instruction in mother tongue at primary stage to the children of linguistic minorities. Article 350A of the Constitution is designed to implement one of the important recommendations of the States

⁹³ Article 39 (e).—The State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age and strength

⁹⁴ Article 39 (f).—The State shall, in particular, direct its policy towards securing 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.

⁹⁵ Inserted by the Constitution (Forty-second Amendment) Act, 1976, Sec. 11 (w.e.f. 3-1-1977).

⁹⁶ Added by the Constitution (Eighty-sixth Amendment) Act, 2002, Sec. 4 (w.e.f. 1-4-2010).

Organization Commission regarding safeguards for linguistic minorities in the States after reorganization.⁹⁷

Article 350A and Educational Rights of Children belonging to Linguistic Minorities: Article 350A⁹⁸ provides for facilities for instruction in mother-tongue at primary stage of education to children belonging to linguistic minority groups.⁹⁹ Mahatma Gandhi, the father of the nation, on more than one occasions emphasized.

on the mother tongue being the medium of instruction. He forcefully said: “The baby takes its first lesson from its mother. I, therefore, regard it as a sin against motherland to inflict upon our children a tongue other than their mother’s for their mental development. I hold it be as necessary for the urban child as for the rural to have the foundation of his development laid on the solid rock of the mother tongue. Who can calculate the immeasurable loss sustained by the nation owing to thousands of its youngmen having been obliged to waste years in mastering in foreign language and its medium, of which in their daily life they have the least use and in learning which they had to neglect their own mother tongue and their literature. The medium of instruction should be altered at once and at any cost, the provincial language being given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating.”¹⁰⁰

Schedules of the Constitution and Provisions Relating to Children Article 245 of the Constitution provides for respective jurisdiction of legislative powers between the Union and the State Legislatures. It provides that Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of the State. It further provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra- territorial operation.¹⁰¹ The various matters of legislation have been enumerated in three lists; List I or the Union List; List II or the State List; List III or the Concurrent List. The Union Parliament has exclusive powers of legislation with respect to 97 subjects or items in List I. the State Legislatures have exclusive powers with respect to 66 items enumerated in List II. The powers in respect of the 47 items in List III are Concurrent, i.e. both the Union and State Legislatures can make laws in respect of the subjects enumerated in the Concurrent List, but any Union Act can override the State Act in the event of a conflict between the two on a matter in the Concurrent List.¹⁰²

⁹⁷ Jagdish Swarup, Constitution of India, Vol. 3 (Modern Law Publication, New Delhi, 2006) at 3395.

⁹⁸ Inserted by the Constitution (Seventh Amendment) Act, 1956, Sec. 21 (w.e.f. 1-11-1956).

⁹⁹ Art. 350A. It shall be endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to

¹⁰⁰ Quoted in English Medium Students Parents Association v. State of Karnataka, AIR 1994 SC 1702 at Para 20.

¹⁰¹ Art. 245. Extent of laws made by Parliament and by the Legislatures of States---(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and Legislature of a State may make laws for the whole or any part of the State. (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

¹⁰² Art. 246.

3.6 Welfare of Children under National Policies of India

Children have been subject of almost every Indian National Policy enacted for the welfare and protection of children since independence. Researcher here feels to mention some provisions relating to welfare of children contained under various national policies which are given under following heads.¹⁰³

The National Policy for Children, 1974: India stands out among a select few nations for having a formalized National Policy for Children. This policy recognizes children as highly valuable assets of the nation and emphasizes the necessity of prioritizing children's programs within the country's overarching plans for human resource development. Key aspects of the National Policy for Children, 1974, include:¹¹⁴¹⁰⁴

(i) A comprehensive health programme covering all children including the care, nutrition and nutrition education of expectant and nursing mothers.¹⁰⁵ (ii) Free and compulsory education will be provided to all children up to the age of fourteen years by the State.

(iii) Special assistance to all children belonging to the weaker sections of the society, such as SC's/ST's and economic weaker sections, both in urban and rural areas. (iv) Provision of education, training and rehabilitation for socially handicapped children, delinquent children, child beggars or children in distress so that they become useful citizens of the country. (v) Protection of children from neglect, cruelty and exploitation.

(vi) Prohibition of children from being engaged in any hazardous occupation or in any heavy work below fourteen years of age. (vii) Treatment, education and rehabilitation of children who are physically handicapped, emotionally disturbed or mentally retarded. (viii) Children are to be given priority for protection and relief in the times of distress or natural calamity. (ix) Amendment in the existing laws so that in all legal disputes the interests of children are given paramount consideration.¹⁰⁶

The National Policy on Education, 1986: The National Policy on Education, 1986 was second comprehensive policy on education since independence after the National Policy on Education, 1968. This policy visualized education as a dynamic, emulative, life-long process, providing diversity of learning opportunities to all segment of society. The main features of the policy related with children are as follows:

¹⁰⁷(i) The National Policy on Education specially emphasised investment in the development of the young child. (ii) This policy recognised the holistic nature of child development, viz., nutrition, health and social, mental, physical, moral and emotional development through Early Childhood Care and Education (ECCE) integrated with the Integrated Child Development Scheme (ICDS) programme. (iii) Universal enrolment and universal retention of children up to 14 years of age. (iv) Exclusion of corporal punishment from the educational system and adjustment of school timings as well as vacations as per the convenience of children. (v) A large and

¹⁰³ Ibid.

¹⁰⁴ The National Policy for Children, 1974, available at: http://www.childlineindia.org.in/CP-CRDownloads/national_policy_for_children.pdf.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ The National Policy on Education, 1986, available at: http://www.ncert.nic.in/oth_anoun/npe86.pdf

systematic programme of non-formal education for school dropouts, for children from habitations without schools, working children and girls who cannot attend whole-day schools.

The National Policy on Child Labour, 1987: The National Child Labour Policy was formulated with the basic objective of rehabilitating the children withdrawn from the employment and to reduce the incidence of child labour. The policy was approved by the Union Cabinet on 14th August, 1987 during the Seventh Five Year Plan period. This Policy contains the action plan for tackling the problem of Child Labour. This Policy is having three parts namely: (i) A Legislative Action Plan; (ii) Focusing and Convergence of general development programmes for benefit of children and (iii) Project-based Plan of Action.¹⁰⁸

The National Policy for Children, 2012: This is second National Policy on Children after the 1974's policy. The National Policy for Children, 2012 affirms the commitment of State to the rights based approach and to ensure that all children grow in an environment with respect for their dignity and freedom from any discrimination, violence, exploitation, exclusion and to have equal opportunities for developing their fullest potential. This policy is applicable to all children below 18 years of age.¹⁰⁹ This policy provides various rights to the children which are as follows: (i) Key principles of this policy is to ensure the right of every child to a life of dignity which will include (but not be limited to) the right to survival, health, nutrition, shelter, development, education, care, protection and participation.

(ii) Every child shall have right to survival, health and nutrition. (ii) Provision of early childhood care for all children upto the age of six years and right to free and compulsory education. (iii) Duty of State to create a caring and protective environment for all children and to create and promote preventive measures to protect children from situations of vulnerability, risk, violence and abuse in all settings whether institutional, non-institutional and family. (iv) This policy fixes responsibility upon the State to ensure that children are made aware of their rights. (v) Further, this policy talks about active involvement and participation of individuals, families, local communities, non-governmental organisations, civil society organisations, media and private sector including government in securing the rights of the child. (vi) Ministry of Women and Child development (MWCD) will be the nodal Ministry for overseeing and coordinating the implementation of this Policy.

¹⁰⁸ Ibid.

¹⁰⁹ The National Policy for Children, 2012, available at : <http://www.ncpcr.gov.in/Letters/NPC%202012-NCPCR.pdf>.

Chapter-4**INTERNATIONAL LAWS FOR WELFARE AND PROTECTION OF CHILDREN****4.1 International Law and Children**

One of the most important developments of the twentieth century has been the establishment of numerous international organizations. After the collapse of the League of Nations, a new organization called the United Nations was born. International organizations have become indispensable instruments to deal with international problems confronted by the international society¹¹⁰. Thus international organization is the process by which states establish and develop a formal structure for the conduct of certain aspects of their relationships with each other. It represents a reaction to the extreme decentralization of the traditional system of international relations and constantly increasing complexity of the interdependence of states. To the extent it may be regarded as manifestation of the organizing process on the international level, to the extent it institutionalizes itself in an attempt to adapt its mechanism to the requirement of interdependence it may be regarded as manifestation of developing institutional structure as an important factor in world affairs.¹¹¹ Palmer and Perkins in this context wrote that, "The great burgeoning of international organization has come only in the present century, when the complexity of world society created a need for them. While they have an obvious indebtedness to the conferences, non-permanent associations, international public unions and other institutionalization of inter state-state relations, their roots go far back into the past"¹¹². The study of history helps one to assess the future and know, the tendencies and continuities which come out of the past. Besides, it expresses the notion that international institutions are devices to deal with current problems. Further, it points out that international organization is an organic development, rooted in the realities and conforming to the necessities of international relations. A proper understanding of the historical background makes us realize that international organization is a distinct phenomenon of world politics though it is a recent growth it has still become as an established trend. At international level child has been given protection under various conventions, recommendations and declarations, adopted/ratified by the world of nations at international, national or at regional level. Researcher here wants to mention some of the important international instruments containing provisions regarding child which are given under following heads.

¹¹⁰ Gupta, Sant Prasad.(1997).International Organisations. Delhi : Pioneer Books,1

¹¹¹ Bilgrami, S.J.R. (1977). International Organisations: A view from within .New Delhi: Vikas Publishing House,1-2

¹¹² Palmer, Norman; Perkins, Howard.(1976). International Relations: The world community in Transition.(3rd ed), 298

4.2 International Declarations, Conventions & Measures for the Protection of Child Rights

4.2.1 The Universal Declaration on Human Rights, 1948

The Universal Declaration of Human Rights, established in 1948, outlines a comprehensive set of human rights applicable to all individuals, including children. While only two articles specifically mention children, the declaration provides for their protection and well-being. Article 25(2) emphasizes the entitlement of children to special care and assistance, safeguarding their rights directly and indirectly through the protection of motherhood. It ensures equal social protection for all children, regardless of their birth circumstances. Article 26 addresses the right to education, emphasizing its accessibility and compulsory nature, particularly at the elementary level. It also promotes technical and professional education accessibility based on merit, and advocates for education directed towards the holistic development of individuals and the promotion of human rights, tolerance, and peace. Article 26(3) acknowledges parents' primary right to choose the education for their children. However, it's noted that the declaration doesn't comprehensively cover children's rights.¹¹³

4.2.2 International Covenant on Economic Social and Cultural Rights, 1966

A child needs special consideration which means there should be provisions for their protection and development and at the same time also provide safeguards against economic and other policies that would have a negative effect on the well being of children. The ICCPR and the ICESCR give a commitment to promote social progress that ensure a better quality of life and greater freedom for people and particularly for children. The Convention on Economic Social and Cultural Rights emphasizes on the aspect that children 'deserve special measures of protection and assistance. It states that every child has a right to such measures of protection on the part of his family, society and state that are required by him on the grounds of he being a minor.

The Covenant makes a reference of children in Articles 10 and 12. Article 10, the states recognize the family as the 'natural and fundamental group unit of society and therefore extend the widest possible protection and assistance to the family. Article 10(3) says that special measures of protection and assistance should be taken without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Article 12(1) contains that the state parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Article 12(2) to achieve the full realization of the above right the state shall make provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child, improve all aspects of environmental and industrial hygiene, prevent, treat and control epidemic, endemic occupational and other diseases and create conditions which would assure to all medical service and medical attention in the event of sickness. Article 13(1) states that everyone has a right to education which includes primary, secondary and higher education which should be made compulsory and free to all. States should take proper measures to implement the same. This Covenant implicitly helped to raise the status of

¹¹³ Das, P.K. (2003). International Law Documents. New Delhi: Universal Law Publishing, 34

children in the resource allocation of the various countries.¹¹⁴

4.2.3 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights 1966 complements the economic, Social and Cultural Covenant. Children are impliedly entitled to benefit from all relevant rights contained in the Covenant and in addition there are specific provisions where it concerns the guardianship of children. Article 14(3)(f) provides that criminal proceedings should take into account the age of the juveniles and their desirability of promoting their rehabilitation. The Covenant prohibits the imposition of death penalty for crimes committed by persons under eighteen years of age. According to Article 23 'The family is recognized as being the natural and fundamental unit of society and as such is entitled to state protection'.

Under Article 18(4) and Article 24(4) states are obliged to respect the liberty of parents to ensure the religious and moral education of children in accordance with their beliefs and in the event of dissolution of marriage provision shall be made for the protection of any children. Article 24 'Every child shall have without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor on the part of his family, society and the state, every child shall be registered immediately after birth and shall have a name and has a right to nationality¹¹⁵

4.2.4 Declaration on the Rights of Child, 1959

The United Nations proclaimed in the Universal Declaration of Human Rights that everyone is entitled to all the rights and freedoms set forth without distinction of any kind such as race, colour, sex, language, birth etc. The child needs special safeguards because of his mental and physical immaturity which includes appropriate legal protection before and after his birth. Article 25(2) of the Universal Declaration of Human Rights states that childhood is entitled to special care and assistance. The above principle along with other principles of the Universal Declaration concerning the child were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly in 1959 which proclaimed that this Declaration shall ensure a happy childhood and enjoy all the rights and freedoms set forth and calls upon parents, national governments and other authorities to recognize these rights and to strive for their observance according to the principles stated in the Declaration.

Principle 1: A child shall be entitled to all rights without distinction on account of race, colour, sex, language, religion, social origin, birth or other status.

Principle 2: Children are entitled to 'special protection' and that such special protection should be implemented by reference to the best interests of the child which shall be the paramount consideration and it also contains a non-discrimination clause'.

¹¹⁴ Geraldine Van Bueren (1995) The International law on the rights of the child. Netherlands: Martinus Nijhoff Publishers

¹¹⁵ Bajpai, Asha (2003). Child Rights in India: Law Policy and Practice. New Delhi : Oxford University Press,1

Principle 3: A child is entitled to a name and nationality’.

Principle 4: A child is entitled to adequate nutrition, housing, recreation and medical services.

Principle 5: Attention is paid to the special needs of physically, mentally and socially handicapped children.

Principle 6: A child shall grow up in the care and responsibility of his parents. *Principle 7:* A child is entitled to receive education.

Principle 8: The child shall be amongst the first to receive protection and relief. *Principle 9:* The child shall be protected against all forms of neglect, cruelty and exploitation and shall not be subjected to traffic in any form.

Principle 10: The child be protected against racial, religious and any other form of discrimination.¹¹⁶ It is a mere declaration which is not legally binding document on the states who have ratified it.

4.2.5 Convention on the Rights of the Child 1989

The Convention coming three decades after the Declaration of the Rights of the child has created a much stronger environment for realizing Declaration’s perception that humanity owes the child the best. It is guided by the principle of a first call for children. All the members of a family particularly children should be given necessary protection and assistance so that it can take the responsibility. Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 Entry into force 2 September 1990.

The States Parties to this Convention, acknowledging the principles outlined in the United Nations Charter, affirm that recognizing the inherent dignity and equal rights of all individuals is essential for global freedom, justice, and peace. They recognize the commitment of the United Nations, as stated in its Charter, to uphold fundamental human rights and the value of every human being, striving for social progress and improved living standards in a world of greater freedom. They also acknowledge the principles of non-discrimination outlined in the Universal Declaration of Human Rights and the International Covenants on Human Rights, which guarantee everyone the same rights and freedoms without distinction based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Recalling the Universal Declaration of Human Rights, where the United Nations affirmed that childhood deserves special care and support, Believing that the family, as the fundamental unit of society and the natural environment for the nurturing and well-being of all its members, especially children, should receive the necessary protection and assistance to fulfill its responsibilities within the community, Acknowledging that children should grow up in a family setting, surrounded by happiness, love, and understanding, for their holistic development, Recognizing the importance of preparing children to lead independent lives in society, guided by the principles of the United Nations Charter, including peace, dignity, tolerance, freedom, equality, and solidarity, Noting the necessity of providing special care for children, as outlined in the Geneva Declaration of the Rights of the Child of 1924, the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959, and reiterated in various international agreements, including the

¹¹⁶ Agarwal, H.O. (2001). International Law & Human Rights.(7th ed) Allahabad Central Law Publications, 699

Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (particularly in articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (especially in article 10), as well as the statutes and relevant instruments of specialized agencies and international organizations concerned with child welfare, Keeping in mind the principles laid out in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", Recalling the principles outlined in the Declaration on Social and Legal Principles concerning the Protection and Welfare of Children, focusing on foster placement and adoption nationally and internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Acknowledging the presence of children worldwide who endure exceptionally challenging circumstances, emphasizing the necessity of providing them with special attention, Considering the significance of respecting the traditions and cultural values of each society in safeguarding and nurturing children, Recognizing the importance of international collaboration to enhance the living conditions of children globally, particularly in developing nations.

Conclusion

An analysis of legislation regarding the welfare of children from both international and national perspectives underscores the critical importance of prioritizing the rights, protection, and well-being of children globally.

Internationally, numerous conventions and treaties, such as the United Nations Convention on the Rights of the Child (UNCRC), serve as foundational frameworks for ensuring the welfare of children. These agreements emphasize principles like non-discrimination, the best interests of the child, and the right to survival, development, and protection. However, while many nations have ratified these conventions, implementation and enforcement vary, highlighting the need for continued advocacy and accountability mechanisms.

At the national level, legislation addressing child welfare varies significantly across countries, reflecting diverse cultural, social, and economic contexts. Effective national laws should encompass comprehensive provisions for child protection, education, healthcare, and social services, guided by principles aligned with international standards. Additionally, legislative frameworks should adapt to evolving societal challenges, such as digital risks, child trafficking, and the impact of conflicts and disasters on children.

In conclusion, while significant progress has been made in developing legislation to safeguard the welfare of children, there are persistent challenges in implementation and enforcement. Bridging the gap between international conventions and national legislation requires concerted efforts from governments, civil society, and international organizations to ensure that children's rights are upheld universally. Strengthening legal frameworks, enhancing access to justice, and promoting awareness and education are essential steps towards creating a world where every child can thrive and reach their full potential.