

CHAPTER VII

CONCLUSION AND SUGGESTIONS

7.1 CONCLUSION

The in-depth study of foregoing chapters has rightly reflected that, in a civilized society the importance of child welfare can be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are "supremely important national asset" and the future well being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: "Child shows the man as morning shows the day" and the Study Team on Social Welfare said much to the same effect when it observed that "the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages".

Children are like lumps of moist mud, which can be moulded into any shape, and it is the duty of every adult living in a civilized society to see that the children are moulded into well-balanced and complete human beings who can become model citizens of tomorrow. Justice Subba Rao has rightly opined, "Social justice must begin with children." Unless children are moulded in their initial years into a mould that is strong and receptive to understand and acknowledge their rights through various legislations, it would be difficult to fight for their rights at a later stage. Therefore a child is like a tender plant, which unless nourished in the formative years, has little chance of growing into a full grown tree which would provide shade and comfort under its spread out branches of wisdom and enlightenment. So first priority in the scale of social justice shall be given to the welfare of children.

Such a child attentive Government was never in the past. This enlightened view towards children developed gradually from the beginning of nineteenth century.

History(Chapter Second) shows that children were subjected to harsh cruelties. Throughout the history of Western societies, children have been killed, abandoned, severely beaten, and sexually abused. Children were considered as the property of their parents or the state, they had little recourse or protection from adult society, which frequently rationalized abusive behavior as being for the good of the child. Certain child-rearing practices considered abusive today were, when viewed in their social and historical contexts, once "reasonable" ways of dealing with children.

Thus we can affirm that childhood is a socio-legal phenomenon of ancient origin. In the old Roman days the life of young subjects was strictly monitored. Roman citizens were under the authority of tutor upto puberty, which was deemed to occur at 14 for males and 12 females. During the infancy, that is to say up to the age of seven, the child was incapable of reason and could perform no legal act. Thereafter the *pupillis* was granted a limited capacity. There would follow a long period in which the young Roman would be regard as minor, and as subjected to *curaminorum*; only at the age of 25 would it require full legal status yet always under the *patria protestas* or father's authority which could last for its entire life. Some of the features of Roman Law applicable to minors can be traced in many contemporary legislations. For instance, it is still common practice not to grant ant legal capacity to infants.

By the eighteenth century, European society was becoming more child centered. Interest in proper care and management was growing; more children were being fed at their mother's breasts, and swaddling was dying out, thereby leaving children free to interact with their care takers. Popular family portraits showed children playing with their parents rather than posing stiffly. During this period, the formal deferential acts towards parents that were so much a pare of post

renaissance family life were replaced by greater informality and less reliance on physical punishment to instill conformity.

In Modern era we see that the juristic concept, that a child is a legal person entitled to the protection of the law has developed during the last two centuries, following the industrialization and the emergence of women's right. The advent of industrial revolution brought about the enactment of child labor laws, some of them dating back to first half of the 19th century (English Factories Act of 1833). The consequential technological development increase the need of qualified personnel which lead to compulsory educational laws. At the same time the progressive liberation of women changed the family's pattern of power, and as a result paternal authority lost its absolute decisional power over the child.

By the turn of this century "Child protection Societies" proliferated, and these societies decided to expand their work to include cruelty to children as well as animals. "Child-saving," as it was called then, was part of the great humanitarian reform movement. In addition to movements to protect the rights of labor, women and animals, protection of children from parental abuse and neglect received stronger social sanctions, and legislation was developed that allowed greater intervention into private homes.

Presently there is no two opinions that children are the future of the nation and thus they should be given adequate opportunity and facilities for developing themselves into a good citizen. This growth, however, depends upon the support and attention he receives from the society. As distinguished from adults, children are peculiarly susceptible to certain harms. They cannot raise their voice against those who injure them or deprive them of their rights. In these circumstances it is a dire necessity to give them proper attention so that their capacity to grow does not dwarf.

As this study is concerned with the Human Rights perspective of the Rights of Child, the third chapter reveals that our national charter in respect of Human

rights is divided into two separate parts. Part III of the Constitution of India houses the “fundamental rights”, which in conventional human rights language may be termed as civil and political rights. Part IV of the Constitution contains the directive principles of State policy (DPSPs), which include all the social, economic and cultural rights. The children also have all the fundamental rights guaranteed under Part III of the constitution of India and it can be enforced by writ petitions under Art.226 with the High Courts and under Art 32 with the Honorable Supreme Court of India. The very preamble of Constitution of India is highly humanistic in nature which unequivocally states that; social, economic and political justice; liberty of thought, expression, belief, faith and worship; equality of status and opportunities; fraternity; assuring the dignity of individual and unity and integrity of nation will be secured to all citizens. Further, it recognizes the need for granting special protection to children. It is intended by our wise founding fathers of the Constitution that children should have their distributive justice in future in our free India.

In *Unni Krishnan v. State of A.P.*³⁹⁷ where the Constitutional Bench articulated that the fundamental right to education flows from Article 21. While declaring the right to education to be a fundamental right, it was held not to be an absolute right, and its content was defined by the parameters of Articles 45 and 41. In other words, every child/ citizen has a right to free education up to the age of fourteen years and thereafter the right would be subject to the limits of the economic capacity of the State. But it was later in December 2000 that Article 21 A was inserted in the Constitution of India which provides that “the state shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the state by law, determine.

Article 24 prescribes the working age of children by prohibiting child to be employed below the age of fourteen. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age

³⁹⁷ AIR 1993 SC 2178

of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility 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. Article 41 provides for right to work, to education and to public assistance in cases of unemployment and in other cases of underserved want. Article 45 directs the state to make provision for early childhood care and education for all children until they complete the age of 6 year.³⁹⁸ Further Article 47 provides that, state has the duty to raise the level of nutrition and the standard of living and to improve public health.

These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented perambulatory introduction: "The nation's children are a supremely important asset. Their nurture and solicitude is our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice".

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objectives set out in the perambulatory introduction and they include measures designed to protect children against neglect, cruelty and exploitation and to strengthen family ties so

³⁹⁸ Article 45 is substituted by the Constitution 86th Amendment Act, 2000, 5.3. The earlier Article 45 was as follows: Article 45 requires the state to endeavour to provide, with in a period of ten year from the commencement of the Constitution to free and compulsory education for all children until they complete the age of fourteen year.

that full potentialities of growth of children are realised within the normal family neighborhood and community environment.

The researcher believes that the perambulatory introduction of National policy could be achieved by imparting education and providing adequate nourishment to all without discriminating among the children. It should be absolute duty of the State. Every guardian whether rich or poor wishes to give best education to their children, including female child. But when economic conditions of the family does not allow to maintain a equality among the children, they choose to drop up female child from the school. So state should come forward to raise the economic level of such family. Once the State does its work, the governing body and all the people who works in that channel of implementation must work determinately and honestly.

Although the varied provisions of Constitution are indicative of good ground covered to protect, and ensure the welfare of children, a closer examination reveals several lapses and inadequacies in the implementation and the operative aspects.

Thus it can be pointed out that the economic rights of children enshrined in the Directive Principles of State Policies are not properly reflected in the primary rules of the country. Though right to food is considered as the extension of right to life yet, such rights like right to food, nutrition, development, education, social welfare etc. still remain out of hand for the children because of two reasons viz;

Absence of national laws in the area directing the state responsibility; and Wrong policy of development in the earlier plans thinking that the development model of the plans would automatically reach down the line.

Besides Constitutional provisions this chapter contain number of legislations pertaining to children, like Civil laws, Criminal laws, Family laws and labor legislation.

In spite of numerous salubrious provisions the **child labor legislation suffers some major short comings**. Firstly, it does not abolish child labor per se. Secondly all the above-mentioned legislations cover only the children in the organized sector and not the unorganized urban and rural sectors and family units. Again the legislation is not compatible with the true spirit of Constitution. Further it can be gauged from the fact that glass industry where children are found to work near furnaces kept at 14,000 degree Celsius and slate Industry where slate dust results in thousand of Silicosis deaths are not included in the Schedule of Children Act, 1986. In categorizing of the hazardous and non-hazardous industries a rational criterion has been pursued. The exemption granted to family run workshop indulging into hazardous process make the legislation redundant. Subsequently except the Plantation Labor Act, 1951 no act makes the provisions for education as responsibility of the employer and so is for medical and recreational facilities. The provisions relating to punishment prescribed under the Acts carries a low deterrent effect. The implementation and enforcement of the Act according Labor Ministry Report is near to dismal. India having 44 millions child workers had only 3488 prosecutions and 1426 convictions between mid 1986 and mid 1993 and the penalty is also between Rs. 50 & 5000 much less than prescribed under the law. Similarly, the largest number of working children are in agriculture where laws about minimum wages, hours of work, minimum age, etc just do not apply. It is not that laws do not exist but it would be impossible to enforce these laws because many more inspectors would be required who would have to travel vast distance to locate arrears where the laws are being violated. Hence, these statutory provisions are irrational and double standard, which indirectly encourage child labor and ultimately hampers the future of the child as well as the future of the Nation.

Civil laws like civil Procedure Code and Indian Evidence Act, provide protection through various legislations to safeguard the rights of a child as far as litigation is concerned. **But the Evidence Act is lacking, as there is no provision for the reception of unsworn evidence from a child, which has to be**

corroborated in order to prove the guilt of the accused, and such evidence is made admissible. Further with regard to legitimacy, the Evidence Act is still running in the same old fashion with little bit of liberalization in some of the personal laws. Therefore it is required that the law should be changed along with the changing phase of scientific knowledge & technology for the betterment of human life, self-fulfillment and development.

Even after sixty years from the commencement of the Constitution, the position of the Child in Family Laws is not only unsatisfactory, and deplorable, but is lagging far behind the Laws of many other Countries, and also the various International Conventions relating to Child, to which India is a Party.

In the **Law of Inheritance**, the innocent Child is liable to be indelible stigmatized and deprived of all Civil Rights and the Right to Human Dignity, if his biological Parents are not wedded to each other. A child is in no way responsible for its parents not choosing to have martial ties; yet it is the Child only who shall suffer in Mind, Dignity, Reputation and Property, which the Parents may suffer nothing. A Child born out of brutal sexual assault on its mother shall suffer for no fault on his part and for something over which he had no control.

Further the **Marriage Act** provides that children of void and voidable marriage shall be deemed to be Legitimate, but only for the purpose of inheriting the properties of the Parents, and of no other Relations. This would, however, protect only those Children of Parents whose marriages are Celebrated in fact according to requisite formalities, but are Void or Voidable, because of contravention of any of the prohibitory provisions of those Acts. But if no Marriage has been performed or if the Marriage has not been celebrated then, no Child conceived out of such union of its Parents shall be treated as Legitimate. All the Rights of such a Child, to dignity, reputation and Property would be lost forever and the innocent Child shall be indelibly stigmatized throughout his Life.

Again, Indian Legislators have given a raw deal to the destitute, abandoned and illegitimate children by making lukewarm provisions for foster and adoptive care. The best of institutional care cannot measure upto the advantages a natural family life can offer to the child. This is possible through foster care and adoption. Yet, India has still not enacted a uniform Adoption Law, permitting adoptions among all Indian citizens. Also, another problem area is that of inter-country adoption. Due to lack of governmental controls and indifferent legal provisions all kinds of children are being proposed for inter-country adoption without ascertaining their legal status – whether they are legally free for adoption or not, whether they are abducted, kidnapped or lost. As a consequence, several malpractices have come into play at every level.

The ordinary criminal laws are totally inadequate to protect the children, who are victims of sexual abuse. These sections do not include the common forms of child sexual abuse nor their impact on the children.

The restrictive interpretation of 'penetration' in the Explanation to Section 375 is an obstacle to cases of CSA. Explanation to Section 375 does not treat forced sexual intercourse by a husband against the wife (above 15 years) as an offence. Section 376 (A) also has the same reasoning.

The classification of penetrative abuse of a child below the age of 12 as unnatural offence under Section 377 or as outraging the modesty of a woman under Section 354 is only depending on the type of penetration is wrong. It ignores the 'impact' of the abuse on the child and focuses more on technicalities. There is no provision to deal with the trauma of the child.

The Indian Penal Code needs to be reviewed. The existing definitions of rape and molestation should be suitably amended to adequately address the various types of sexual assault on children. In fact, sexual assault on children should be made a specific offence requiring stringent punishment.



Though the JJ Act does not have the character of a comprehensive child development legislation, it was seen as a welcome development. However, unfortunately, many states in India are yet to make necessary Rules to enforce the JJ Act. One positive aspect of the JJ Act is that it provides for decision-making devices like the Juvenile Justice Boards and Child Welfare Committees having multidisciplinary composition. Nonetheless, it was observed that in many places the Juvenile Justice Boards (JJB) and the Child Welfare Committees (CWC) are not constituted at all. The previous experience shows that in many places where such bodies were constituted under the JJ Act 1986, its members were not sensitive and passionate to the cause of child rights. In the absence of a sensitive juvenile justice system, even those children who are brought before the system continued to suffer. It is time for professionals from all disciplines to give a serious thought to this situation and make efforts to ensure that the JJ Act is properly implemented with the help of carefully constituted and multidisciplinary JJBs and CWCs.

Conclusively for third chapter we can say that in spite of this the community by and large is not fully aware of the existing legislative laws and their implications. The laws are neither taken seriously nor enforced or implemented by the State machinery. They are violated and circumscribed by the concerned people with implicitly. Besides these have many structural loopholes and other important areas not covered adequately.

Child no longer remained the domestic issue it had gained a Universal importance, so researcher has included International legislation in her fourth chapter. International protection of children finds its justification in the fact that, regardless of their geographical or cultural origin, children are prey to exploitation. They are the most vulnerable group in all societies. Owing to this it has got the **universalized identity as neutral object, conflict free zone in human relations**. The concrete application of it as-a-neutral-zone idea came in 1985 in EL Salvador, when the combatants agreed upon a three-day truce, on 3 March, and 22 April, allowing 3,000 health workers to immunize nearly 250,000

children against polio, measles, diphtheria, tetanus and whooping cough. An analogous success was obtained the following year in Uganda. United Nation Organization has recognized various rights of Child as its Human Rights, without discriminating among the Nations. Thus my fourth chapter deals with legislative aspect at International level.

In the international arena the first convention indirectly protecting children began in the late 19th and early 20th centuries. Since then there has been a proliferation of such treaties. Presently, one can identify over 80 international instruments that concern, in one way or another, the situation of children, and many of them are binding.

Children's rights emerged as a subcategory in the development of the rules of war and of the international labor conventions. The Fourth Geneva Convention Relative to the Protection of Civilian Persons at the Time of War, applied during international armed conflicts, accords to children as protected persons, humane treatment, which includes respect of life and physical and moral integrity. Torture, coercion, corporal punishment, collective penalties and reprisals are prohibited. In non-international armed conflict situations, the right to be treated humanely is accorded to children as person taking no part in hostilities by Article 3 common to the IV Geneva Conventions. Hague Convention of 1899 and 1907 also had provision, which gave certain protection to children as member of civilian population. Protocol I of 1977 developed the concept that in international armed conflicts a distinction was to be made between combatants and civilians. Protocol II of 1977 extended this principle to non-international armed conflicts, stipulating that, 'civilians shall not be the objects of attack.

Among the various legislations The United Nations Convention on the Rights of Child (UNCRC) requires special mention here. If one goes deeply in this Convention will find that it is the sum total of the International Bill of Human Rights, 1948's Universal Declaration, and the 1966 International Covenant on Economic, Social and Cultural rights(ICESCR) and International Covenant on

Civil- and Political Rights (ICCPR) with its Optional protocol. The UNCRC recognizes the rights of the child like the right to life, right to a name and to acquire a nationality, right of the child to preserve his or her identity, right of the child to express his or her views in matters affecting the child, right to freedom of expression, right of the child to freedom of thought, conscience, and religion, right of the child to freedom of association and peaceful assembly, right of the child to have access to information and material from a diversity of national and international resources, right of the child to be protected from all forms of physical or mental violence, injury or abuse, or negligent treatment, maltreatment, or exploitation, right of the child to benefit from social security, right to a standard of living, right to education, right of the child to rest and leisure etc.

But it must be understood that the child rights do not confine to that document alone. The Human rights which are applicable to all are applicable to children also, needless to say. The former Secretary-General of the United Nations, **Kofi Annan**, marking the 50th Anniversary of the Universal Declaration of Human Rights, said: "Human rights are the foundation of human existence and coexistence. Human rights are universal, indivisible and interdependent. Human rights are what make us human. They are the principles by which we create the sacred home for human dignity."

There are many international documents which have been signed and ratified by India. These covenants and treaties and declarations are pivotal as far as the diplomatic and strategic relations of India are concerned. The prominence of the international documents giving importance to the rights of child in India cannot be discussed without contemplating its validity in India. Now arises the hundred billion dollar question- whether these international treaties and covenants can be enforceable? Article 51 of the Constitution of India states that "the state shall endeavour to – inter alia foster respect for international law and treaty obligations in dealing with organized people with one another. In *Vishaka V State of Rajasthan*, it has been ruled by the apex court that in the absence of

enacted domestic laws, international covenants and norms must be read into them. It is thus a rule of judicial construction that regard must be given to International Covenants and norms for construing domestic law when there is no inconsistency between them. Further in *Chairman, Railway Board and others V. Mrs. Chandrima Das*, the Supreme Court aptly observed that the international covenants and declarations as adopted by the U.N have to be respected by all signatory states.

Researcher in the fifth chapter has tried to bring into focus the various vulnerability aspects of children. It has included various victimized situation which might not be listed in the statistical data of child victims. Each year, millions of children are directly experiencing or witnessing increased violence and abuse in their homes, neighborhoods and schools. Children from broken homes abandoned and destitute are easy targets of unscrupulous elements. Their tender age, innocence, lack of experience and absence of any guidance add to their vulnerability. The general penal code of this country and the various protective and preventive 'Special and Local Laws' specifically mention the offences where in children are known to be victims. Listed crimes against children are infanticide, foeticide, buying and selling of girls for prostitution, abetment of suicide and child marriage. These are the only statistics that seem to be available on child victims. What we lack is a national repository of all child victimizations that is published every year and which I have tried to categorized in many forms in this chapter. This may include orphans, abandoned and destitute, working and street children, victims of natural calamities, emergencies or man-made disasters, children with disability, AIDS affected children, children engaged in substance abuse, children of sex workers, juvenile offenders or children in conflict with law, children of families 'at risk' like refugees, migrant and construction workers, chronically and terminally ill, prisoners of lifers, single parents and the girl child.

Though accurate figures are unavailable, each year there are thousands of children who enter the multi-million dollar illegal sex market. Children are

coerced, kidnapped, sold and deceived or otherwise trafficked into enforced sexual encounters. The damage, commercial sexual exploitation, causes to the children is unquestionable. Children are robbed of their natural sexual development and their sense of dignity and self-esteem as well. Their physical and mental health are put at tremendous risk, their rights are violated and there only support may come from those who exploit them.

Over the past decade new manifestations of child victimization have emerged. Advance in technology have brought serious treats and potential harm to children. Video cameras are increasingly used to produce child pornography. Computer equipped with scanners and access to the Internet are used to disseminate child pornography worldwide and to solicit children for sexual encounters.

Research also reveals new information about intergenerational cycle of violence. A link between early victimization and the later involvement in violent crime has been identified. Witnessing violence at home and in the community also has adverse effects on the child's mental health and development, including an increased likelihood in some children to become directly involved in violence, whether as victims or perpetrators, as they mature.

Such tragedies are not just a day's happening. They happened yesterday; they are happening today; and they will happen again tomorrow – unless the nation decides to give priority to what can now be done to protect the victimization of these vast sections of its children.

In dealing with the victimization of children, the role of law enforcement agencies is most crucial, as any effort taken even in the best interest of the children should not cause secondary victimization. This calls for a sensitization of the personnel of the criminal justice system, particularly, the police as they are the first agency to come in contact with the child victims. Sensitization programmes should cover the prosecutors, lawyers and even the judges at all

stages of the criminal proceedings. In fact, I would go one step further and advise that sensitization programmes should extend to the legislators and policymakers.

The study of this topic had made me to realise that though there is no dearth of normative measures in India protecting rights of the children and promoting their welfare, the children have been worst sufferers in the existing socio-legal culture. One interesting finding was that the sufferings of children have been more or less same in all countries; and the measures adopted or attempted to deal with the children and to do away with the practices responsible for their sufferings by the respective national government, have been apparently the same. But the less developed country like Africa whose income per capita and GDP is less than India is in better position regarding the health status of child. The percentage of malnourished children in Africa is less than Asia. The reason behind such a astounding situation has been discussed under this chapter under the sub-heading of Nutrition and children, as Asian Enigma. In short we can say that malnutrition, in Asia can be avoided if families establish command over food and health care, acquire and apply knowledge on child caring and rearing practices, allocate time to look after children and protect the cleanliness and safety of the environment. Considerable research points out that nutrition and healthy growth are the outcome of three essential factors: accessibility of food in the home, health care, both preventive and curative, and child caring practices.

Denial of opportunities to children for their development should be considered a crime, and crimes against children should be viewed as serious human right violations, attracting severest forms of punishment. There is an urgent need for a comprehensive child care/ development legislation, which would combat cruelty, abuse, exploitation and child right violation which appears to be on the rise with each passing day. There should be a separate and adequate legislation, dealing with child rights, child sexual abuse, child trafficking, child neglect, atrocities against children, exploitation, child labor, rehabilitation, special protection to children in institutions, etc., providing for stringent forms of

punishment against offenders. All the offences against children should be considered grave and cognizable in nature under the law and the onus of proof in any trial should lie upon the offender considering the vulnerability and helplessness of children.

As per the analytical study of criminal psychology of the child, the working force behind every criminal act is the forcible circumstances and in some cases the guilty mind of the doer. These factors are indicators that some are hard core criminals, while some are just victims of circumstances. Our laws and theories of punishment are according to these factors. But the level of implementation and enforcement is not effective enough. Due to the lack of effective implementation, large number of children are victimized.

In this situation, Supreme Court plays a vital role and directs the Government to make policy effective, to take appropriate steps and implements law effectively. Not only this, Supreme Court further gives guidelines for reforming the legislations and consolidates the various State Acts and bring a new juvenile jurisprudence. Such work of judiciary has been discussed in my sixth chapter. In *Sheela Barse's case*³⁹⁹, Chief justice Bhagwati, ordered and appointed a committee of district judges in 1986 to survey the condition of jails where, inspite of statutory provisions the juvenile were kept in jails. Later in the same case, again it was sought to be impressed upon the State Government that they must set up the necessary remand homes and observation homes where children accused of an offence can be lodged, pending investigation and trial. In accordance with the Supreme Court, the Parliament has come forward by enacting the Juvenile Justice Act. 1986.

In another case of *R.D. Upadhyaya V. State of A.P. & Others*⁴⁰⁰ court had issued the directions for the development of children who are in jail with their mother and who are in jail either as under trial prisoner or convicts. Court considering

³⁹⁹ AIR 1986 SC 1773

⁴⁰⁰ AIR 2006 SC 1949

the report of National Institute of Criminology and Forensic Sciences found that rights viz, right to food, shelter, medical care, clothing, education e.t.c. are grossly neglected for these children, so it gave a detailed directions regarding , right to food, shelter, medical care, clothing, education and recreational facilities, these issues and other matter.

In *Gopinath Ghosh v/s State of West Bengal*,⁴⁰¹ Supreme Court found many deficiencies in the existing laws dealing with drug Trafficking and the penalties provided therein were not sufficiently deterrent to meet the challenge of well organized gang of smugglers. It was felt that there is an urgent need for the comprehensive enactment of legislation for exercising effective control over the Psychotropic Substances.

While expressing the need of protection against the exploitation and against the moral and material abandonment, Supreme Court in the case of "*Laxmikant Pandey v/s Union Of India*"⁴⁰² observed that no society can afford to ignore the neglected and delinquent juveniles as it may have a far reaching effect on the society as a whole. This case gave a detailed directions in case of intercountry – adoption as there was no particular legislations on this topic. Thus by such judicial activism Supreme Court has many time performed the function of legislature.

There are also instances where the judiciary has acted as legislator first then parliament had almost after a decade realized to have enactment on that particular topic. One such popular case in *Unni Krishnan v/s U.O.I.*⁴⁰³ where the judiciary with its forceful efforts have provided the right to education, the status of fundamental right.

Recently two women authors namely Asha Bajpai and Pinki Virani published their books on these issues. (Child Rights in India and Bitter Chocolate: Child

⁴⁰¹ AIR1984 SC237

⁴⁰² AIR SC 469

⁴⁰³ AIR 1993 SC 2178

Abuse in India, published by Oxford Press in 2000) These highlights the fact and legal aspects and trace the need to meet the challenges. It is the matter of regret that despite several legislations and frequent exhortation by social scientists and authors, there are still large number of children who are exploited and abused by antisocial elements. Not only the anti social element but also the so called eminent and high officials also sexually exploit and abuse children. For instance, the case of Haryana D.G.P accused for abusing Ruchica, a teen age student, is still pending.

Taking cognizance of such events Supreme Court by the order dated 13/Jan/98 directed the law Commission to review of Rape laws (the petition filed by "Shakti Vahini"⁴⁰⁴) As directed by the Supreme Court, law Commission presented its report in 2000. Then the apex court directed the Government of India to bring the "Implementation of action plan". Recently in 2002, Court extended the time limit on the request of government for implementation of the action plan.

There are some other cases in which Supreme Court laid down the principles and norms and has directed the Government to implement them. For example in the case of *Praful Kumar Sinha v/s State of Orissa* ⁴⁰⁵ Court recognized that certain directions were necessary for the proper management of the institution and directed Union Government to implement them. It was the case about the sexual exploitation of a blind student in a school of Behrampur of Orissa. In another case of *"Gaurav Jain vis Union of India"*⁴⁰⁶, the Division Bench directed the establishment of Juvenile Homes for rehabilitation of child prostitutes. In *"lakshmi kant vis Union of India"* ⁴⁰⁷, made a constructive use of PIL and judicial activism, in coming to the rescue of sexually harassed women and issued many guidelines and norms, to prevent such harassments.

⁴⁰⁴ CrJ. No. 33 of 1997

⁴⁰⁵ AIR 1989 SC 1783

⁴⁰⁶ AIR 1990 sc 292

⁴⁰⁷ AIR 1992 SC 6

The above and similar decisions rendered by the Supreme court demonstrate the contribution made by the judiciary towards the protection of the right of children and also explained how courts take responsibility to make law effective for better. Court has greatly contributed towards the reform of effective Juvenile laws, to bring about a new Juvenile jurisprudence.

The Supreme Court directives are welcome step to ameliorate the hardships of the poor children at work. However, keeping in view the ground realities, implementation of these directions require comprehensive follow up action plan. There are doubts how effective the penalty realization from employers would prove to be. Because industries employing child labor have mastered the art of pretending that in their industry child employees do not exist, while child laborers themselves are often coerced, or encouraged by their need for wages, to conceal their actual wages. As the dismal failure of the 1986 Act shows, employers of child labor to find support from local Governmental officials, who collude in illegal employment opportunities.⁴⁰⁸

Child development and welfare is an important social objective and it refers to taking care of all aspects related to childcare. Law is one of the important means to achieve this goal. Unfortunately at present, there is no uniformity of laws regulating and controlling different facets related to child. In some cases it is the personal law that governs in others it is the secular law. There diversity and interaction raises problems which hamper achievement of this objective.

Therefore a uniform policy covering all spheres of child development is required. Religious laws should be replaced by a uniform legislation on children. Laws related to children should aim at giving every child one environment, which is most conducive to their welfare and balanced development.

Further the responsibilities of the State towards children are ensured in our Constitution. Only a few laws relating to children were enacted before

⁴⁰⁸ See Parveen Swami, Getting Children to School- Lack of follow up to judicial interventions: Frontline vol 14 (1997) at. p. 82.

Independence. Consonant with its commitment to welfare, the Government of India enacted in the Post-Independence period, a plethora of social legislation unprecedented in its long history. These laws derive their legitimacy and strength from the Indian Constitution, the International Labor Organisation (ILO), Conventions and Recommendations as also from the Declaration of the Rights of the Child adopted by the General Assembly of United Nations and the Resolution adopted by Government of India on National Policy for Children.

While many legislations have been enacted to protect, promote and safeguard the interests of children, their implementation leaves much to be done. These lacunae in law are clear pointers to the fact that legislation in India pertaining to the child needs to be thoroughly updated. **It is a pity that laws always lag behind the needs of the time.** This is due to the fact that the legislators are unaware of the immediate requirements of the community as well as unheeding of the innovative measures required for amelioration of social evils. Therefore law should not remain static. It should change paying due respect to the needs, feelings and aspirations of the community.

Let us hope and pray that we shall wake up before matters become irreparably worse, and take all expeditious steps to remove this socio-legal phenomenon. **Let us fervently hope that we would very soon realize the great truth of what Tagore stated, namely, "that our Children are like spotless, pure flowers and have brought messages from heaven and deserve our blessings. Let us also hope that the Government of India obliges herself to reform its National law relating to children in conformity with the Convention on the Rights of the Child and other international instruments."**

7.2 FINDINGS OF THE STUDY

7.2.1 FACTS ON EDUCATION⁴⁰⁹

- Less than half of India's children between the age 6 and 14 go to school.

⁴⁰⁹[http:// www.education.nic.in](http://www.education.nic.in)

- A little over one-third of all children who enroll in grade one reach grade eight.
- At least 35 million children aged 6 - 14 years do not attend school.
- 53% of girls in the age group of 5 to 9 years are illiterate.
- In India, only 53% of habitation has a primary school.
- In India, only 20% of habitation has a secondary school.
- On an average an upper primary school is 3 km away in 22% of areas under habitations.
- In nearly 60% of schools, there are less than two teachers to teach Classes I to V.
- On an average, there are less than three teachers per primary school. They have to manage classes from I to V every day.
- High cost of private education and need to work to support their families and little interest in studies are the reasons given by 3 in every four drop-outs as the reason they leave.
- Dropout rates increase alarmingly in class III to V, its 50% for boys, 58% for girls.
- 1 in 40, primary school in India is conducted in open spaces or tents.
- In Andhra Pradesh (South India), 52 upper primary schools were operating without a building in 2002, while in 1993, there were none.
- In Maharashtra (West India), there were 10 schools operating without a building in 1993, this has climbed to 33 in 2002.
- More than 50 per cent of girls fail to enroll in school; those that do are likely to drop out by the age of 12.
- 50% of Indian children aged 6-18 do not go to school⁴¹⁰

7.2.2 STATISTICS ON CHILD LABOUR

- 17 million children in India work as per official estimates.

⁴¹⁰ 7TH All India Education .nic.in

- A study found that children were sent to work by compulsion and not by choice, mostly by parents, but with recruiter playing a crucial role in influencing decision.
- When working outside the family, children put in an average of 21 hours of labour per week.
- 19% of children employed work as domestic help.
- 90% working children are in rural India.
- 85% of working children are in the unorganized sectors.
- About 80% of child labour is engaged in agricultural work.
- Millions of children work to help their families because the adults do not have appropriate employment and income thus forfeiting schooling and opportunities to play and rest.
- Children also work because there is demand for cheap labour. High incidence of child labour is a result of high incidence of adult unemployment.
- Large numbers of children work simply because there is no alternative - since, they do not have access to good quality schools.
- Poor and bonded families often "sell" their children to contractors who promise lucrative jobs in the cities and the children end up being employed in brothels, hotels and domestic work. Many run away and find a life on the streets.
- There are approximately 2 million child commercial sex workers between the age of 5 and 15 years and about 3.3 million between 15 and 18 years.
- They form 40% of the total population of commercial sex workers in India.
- 80% of these are found in the 5 metros.
- 71% of them are illiterate.
- 500,000 children are forced into this trade every year.

7.2.3 DATA ON HEALTH

- 70 in every 1000 children born in India do not see their first birthday. The total number of such children works out to 2 million.

- 58% of India's children below the age of 2 years are not fully vaccinated. And 24% of these children do not receive any form of vaccination.
- 95 in every 1000 children born in India do not see their fifth birthday.
- Only 38% of India's children below the age of 2 years are immunized.
- 74% of India's children below the age of 3 months are anaemic.
- Over 60% of children in India are anaemic.
- Acute respiratory infections are leading causes of child mortality (30%) followed by diarrhoea (20%) in India.
- One in every 100 children in India between age group of 0-14 years suffers from acute respiratory infection.
- Almost one in every five children in India below the age of 14 suffers from diarrhoea.
- 58% of India's children below the age of 2 years are not fully vaccinated. And 24% of these children do not receive any form of vaccination.
- Only 38% of India's children below the age of 2 years are immunized.
- Almost one in every five children in India below the age of 14 suffers from diarrhoea, and preventable disease.

7.2.4 SPECIAL STATISTICS ON GIRL CHILD

- 1 out of every 6 girls does not live to see her 15th birthday.
- Of the 12 million girls born in India, 1 million do not see their first birthday.
- Of the 12 million girls born in India, 3 million do not see their fifteenth birthday, and a million of them are unable to survive even their first birthday.
- One-third of these deaths take place at birth.
- Every sixth girl child's death is due to gender discrimination.
- Females are victimised far more than males during childhood.

- 3 lakh more girls than boys die every year
- Female mortality exceeds male mortality in 224 out of 402 districts in India.
- Death rate among girls below the age of 4 years is higher than that of boys. Even if she escapes infanticide or foeticide, a girl child is less likely to receive immunisation, nutrition or medical treatment compared to a male child.

7.2.5 UPDATES ON NUTRITION

- More than 50% of India's children are malnourished.
- While one in every five adolescent boys is malnourished, one in every two girls in India is undernourished.
- 23% of India's children are underweight at birth.

7.2.6 THE RIGHT TO EXPRESSION: Every child has a right to express himself freely in which ever way he likes. Majority of children however are exploited by their elders and not allowed to express.

7.2.7 THE RIGHT TO INFORMATION: Every child has a right to know his basic rights and his position in the society. High incidence of illiteracy and ignorance among the deprived and underprivileged children prevents them from having access to information about them and their society.

7.2.8 THE RIGHT TO NUTRITION: More than 50% of India's children are malnourished. While one in every five adolescent boys is malnourished, one in every two girls in India is undernourished.

7.2.9 THE RIGHT TO HEALTH & CARE: 58% of India's children below the age of 2 years are not fully vaccinated. And 24% of these children do not receive any form of vaccination. Over 60% of children in India are anemic. 95 in every 1000 children born in India, do not see their fifth birthday. 70 in every 1000 children born in India, do not see their first birthday.

7.2.10 THE RIGHT TO PROTECTION FROM ABUSE: There are approximately 2 million child commercial sex workers between the age of 5 and 15 years and about 3.3 million between 15 and 18 years. They form 40% of the total population of commercial sex workers in India. 500,000 children are forced into this trade every year.

7.2.11 THE RIGHT TO PROTECTION FROM EXPLOITATION: 17 million children in India work as per official estimates. A study found that children were sent to work by compulsion and not by choice, mostly by parents, but with recruiter playing a crucial role in influencing decision. When working outside the family, children put in an average of 21 hours of labour per week. Poor and bonded families often "sell" their children to contractors who promise lucrative jobs in the cities and the children end up being employed in brothels, hotels and domestic work. Many run away and find a life on the streets.

7.2.12 THE RIGHT TO PROTECTION FROM NEGLECT: Every child has a right to lead a well protected and secure life away from neglect. However, children working under exploitative and inhuman conditions get neglected badly.

7.2.13 THE RIGHT TO DEVELOPMENT: Every child has the right to development that lets the child explore her/his full potential. Unfavourable living conditions of underprivileged children prevents them from growing in a free and uninhibited way.

7.2.14 THE RIGHT TO RECREATION: Every child has a right to spend some time on recreational pursuits like sports, entertainment and hobbies to explore and develop. Majority of poor children in India do not get time to spend on recreational activities.

7.2.15 THE RIGHT TO NAME & NATIONALITY: Every child has a right to identify himself with a nation. A vast majority of underprivileged children in

India are treated like commodities and exported to other countries as labour or prostitutes.

7.2.16 THE RIGHT TO SURVIVAL: Of the 12 million girls born in India, 3 million do not see their fifteenth birthday, and a million of them are unable to survive even their first birthday. Every sixth girl child's death is due to gender discrimination.

According to recent UNICEF (2005) report on the state of the world's children under the title "Childhood Under Threat", millions of Indian children are equally deprived of their rights to survival, health, nutrition, education and safe drinking water. It is reported that 63 per cent of them go to bed hungry and 53 per cent suffer from chronic malnutrition.

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

Clearly, we have a lot to answer for. And as concerned citizens should do something about it; something meaningful, something concrete, something urgently. No more do we have the luxury of blaming the system or postponing our actions. The time to take collective as well as individual responsibility to remedy the present situation is here. Right now! And also we need many more smiles to cater to the vast (increasing) number of children in our country's population.

7.3 SUGGESTIONS

Though there are numerous salubrious provisions for the protection of children in India the existing legal framework is rather dispersed and inadequate. Also,

plans and policies of Indian Government are at loose ends and therefore it is very difficult to suggest remedy for Children's Protection. It is with this object that the following suggestion are been extended which may be taken note of while considering the protection of children by all those who are interested in it. As my research work has thrown light on various aspects/ topics of child rights, it will be convenient to discuss suggestions in accordance with those divisions generally.

7.3.1 CHANGES REQUIRED IN FAMILY LAW

- There are still thousands of child marriages reported throughout the country. Early marriages are a form of child sexual abuse and a violation of a child's freedom to enjoy childhood. Child Marriages Restraint Act 1928 is very weak and dilatory and is not being implemented.
- The child marriage restraint act should be made more strict and committee to that effect should be appointed in order to prevent child marriages.
- The matrimonial court should continue to have jurisdiction on any matter regarding the child and the children should be treated as independent party and they should be represented separately. They should be represented through guardian ad litem or child's legal counsel or social worker, involved throughout the court proceedings in which children are involved.

7.3.2 CHANGES REQUIRED IN CRIMINAL LAWS

- The existing definitions of rape and molestation should be suitably amended to adequately address the various types of sexual assault on children. In fact, sexual assault on children should be made a specific offence requiring stringent punishment.

- The restrictive interpretation of 'penetration' in the Explanation to Section 375 is an obstacle to cases of CSA. Explanation to Section 375 does not treat forced sexual intercourse by a husband against the wife (above 15 years) as an offence. Section 376 (A) also has the same reasoning. The meaning of penetration should be widened up as suggested in the case of *Sakshi V. Union of India and others*⁴¹¹
- The testimony of the child victim is not recorded sensitively by the police/ judge/ prosecutor magistrate. The recording of the statements of child victims need a special provision in the Cr PC. There is no such provision at present.
- Trained personnel should interview the victim children. The language of the child is to be understood by the legal system.
- Under the present system the natural habitat of the victim is generally disturbed, which is a source of trauma to the child. The delays in the system at every stage further add to the trauma of the child victim. If possible, child victim should be interviewed in his home and provision for speedy trial should be implemented effectively.
- There are several cases pending in the courts as the trial goes on for years. In several cases the girls have become adults by the time the final judgment comes through. The investigation of trial of sexual offences have to be made time bound. Special courts with time bound or fixed date of trials need to be set up.
- A change in the legal values system on the age of marriage must also be reflected in the legal values with the regard to the age for expression of sexual consent in laws regulating rape and other sexual offences¹⁸ This will require reform in the penal code as well.

⁴¹¹ 1999 (6) SCC 591

7.3.3 CHANGES REQUIRED IN THE JUVENILE JUSTICE ACT

- The Act needs amendments. This new Act should include procedural guarantees such as right to counsel, right to speedy disposal of cases and right to child friendly proceedings.
- In most of the advanced countries one of the most resorted to dispositional alternative is the compulsory education order. The education of these children should be in keeping with the market trends⁴¹².
- The inspection of the child institutions set up under this Act should be carried out to with some special issues in mind. Homosexual behaviour is largely common in institutions. There should be compensation provided, for children who have been victims of custodial and institutional abuse as per the Supreme Court decision in the case of **Nilabati Sehara v State of Orissa**⁴¹³.
- The Government schemes relating to child development, education and child labor should reach the children in institution. Recruitment and personnel policies of the staff in these homes need to be immediately reviewed so that committed and sensitized people are involved in looking after children⁴¹⁴.
- The Juvenile Welfare Boards are not equipped to deal with children who are victims of sexual abuse. The Observation Homes set up under the Juvenile Justice Act, 1986, do not provide special care and treatment for victimized children. The structures under the new Juvenile Justice (Care and Protection of Children) Act, 2000 have still to be put in place.

7.3.4 CHANGES REQUIRED IN THE INDIAN EVIDENCE ACT, 1872

⁴¹² Bajpai Asha, Child Rights in India - Law, Policy and Practice, O UP, New

⁴¹³ AIR 1993, SC.

⁴¹⁴ Bajpai Asha, Child Rights in India - Law, Policy and Practice, O UP, New

- Indian Evidence Act, 1872, needs to be further amended to lay down that corroboration of the evidence of child victim is required to prove the guilt of the accused.

7.3.5 CHANGES REQUIRED FOR PREVENTION OF CHILD TRAFFICKING

- Immediate steps should be taken to enforce extra territorial laws and initiate appropriate action to ensure that no offending foreign tourist escapes punishment by leaving the country.
- Appropriate legislation should be immediately initiated to make in case of sex tourism, extradition and other arrangements. This is necessary to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or the destination country.
- There should be a provision for confiscation of seizure of assets and profits and other sanctions against those who commit sexual crimes against children in destination countries. Relevant sharing of data should be there among different countries.⁴¹⁵

7.3.6 CHANGES REQUIRED FOR PREVENTION OF CHILD SEXUAL ABUSE

- Child sexual abuse is a complex problem. Requiring a complex multidisciplinary, multicomponent approach. Social workers, doctors, lawyers, counsellors, and police should work together to deal with the issue. There are proposed law reform made in the 172 law Commission Report. They need to be immediately passed in the interest of the child. It is imperative to have a multi disciplinary, comprehensive, coordinated and integrated services for such children.⁴¹⁶

⁴¹⁵ Bajpai Asha, *Child Rights in India- Law, Policy and Practice*, OUP, New Delhi, 2003.

⁴¹⁶ Bajpai Asha, *Child Rights in India- Law, Policy and Practice*, OUP, New Delhi, 2003.

- Awareness regarding various types of sexual abuses must be made known to the Adolescent children.

7.3.7 CHANGES REQUIRED IN THE PROTECTION OF PROSTITUTES

- Generally the police resort to Indian Penal Code and Immoral Traffic Prevention Act, 1956 to remove the prostitutes and the children of prostitutes (COP) or the child prostitutes (CP), from the red-light areas. But the forceful rescue of children of Prostitutes and Child Prostitutes in reality is not successful. It is important to take steps for their rehabilitation. The aid of the definition of neglected child under Juvenile Justice Act, 2000 must be taken and the rescued child prostitutes must be kept in Juvenile Homes as a place of safety.
- The involvement of NGOs, citizens and particularly Women Organizations would be more successful in retrieval of child from prostitution and help in the rehabilitation.
- A permanent Committee should be constituted by the Ministry of Welfare, Government of India, to review the progress and implementation of schemes for child welfare and rehabilitation. The National Commission for Children must be set up to oversee the implementation of Convention on the Rights of the Child, 1989.
- Work can also be done in co-ordination with organizations working for elimination of child labor and boards for the juveniles.

7.3.8 CHANGES REQUIRED IN RIGHT TO EDUCATION

- There is a need for National Law on education instead of scattered acts in different states. It should have provisions for free, compulsory, **qualitative** elementary education. It should also incorporate provisions for rest, leisure and recreation of the child.

- Article 21(A) of the Constitution speaks of free and compulsory education for all children till the age of 14 years. If this single provision is put to practice, half the battle would be won. Even before this Government started many projects on education, one of the prominent among them is SARV SIKSHA ABHIYAN under which many schools have been established at district and block levels. Various schemes like mid day meal, free clothing, scholarships etc are also granted by the Central Government and the respective State Governments. But the ground reality is that these grant in aids are not reached to the needy in full. Before reaching to them it is shared among the channels through which aids are reaching to them. By this the investment made in the children (future of the Nation) no longer remains the investment. Thus there is a need of transparency and dedication in working.
- Besides this teachers appointed in the Government School should feel and realize their responsibility towards children. Job security should not be understood in negative terms. I believe that package to the teachers should be enhanced and they should be appointed on contractual basis for a term of five years which may be further extended if the job is found satisfactory.
- The entire expenditure of education should be borne by the government in Government school.
- The private school should have atleast 5% reserved quota for children from weaker section of the society, for whom the education should be free.
- Screening test of either parents or pupil at the time of admission should be prohibited in Government or private school.
- The school curriculum should be made realistic and vocationalized and school environment should be made attractive and interesting.

- School should be managed by School Management committee which should be composed of parents and teachers.

7.3.9 CHANGES REQUIRED IN PREVENTING CHILD LABOR

- There should be uniform definition of Child Labor for all legislations relating to employment of children and a 'child' should be construed as a person below 18 years of age.
- Child labor Act be amended so that household enterprises ,government schools, training centres and the invisible hidden child labor in the unorganized informal sector is brought within the preview of the Act.
- A mandatory registration of the child domestic worker and the employers, development of help lines and outreach programs is required to protect the child workers. The Government should also ensure compliance of the Supreme Court ruling on Child labor.⁴¹⁷
- The Act should also address issues related to rehabilitation, education and family income generation schemes.
- The Factories Act should be amended to cover all factories or workshops employing child labor. The Beedi Act should be amended so that exemptions for household based production are eliminated. Employers should be required to have and produce on demand proof of age of all children working on their premises.
- This menace of child labor can not be solved merely by adopting conventions and framing law. Unless economic disparities are removed from the society, the situation will not only remain, the same but it shall deteriorate further. This could be achieved by adopting follwing suggestions:

⁴¹⁷ AIR 1997, SC. 699

- The amount which is earned by the child can be compensated in term of money by the Government.
- The adult member of the family should be given employment so that the children can go to school.
- The problem needs not the legal but emotional and human approach.
- It is humbly submitted that the mechanism of social insurance to the masses be established. Under this scheme of social insurance., each individual should be made entitled to some minimum fixed stipendary allowance according to his status and education. This benefit should be extended to every individual until he is in a position to stand onto his own, this shall take care of his most basic needs. Simultaneously attempts should be made to open employment channels for unemployed. Once and individual starts earning his stipendary benefits may be withdrawn. This will ensure the most basic needs of the family and under such a situation no parents would like their children to undergo the hardships of child labor.
- This can be worked out if we sincerely desire to bring about a social change in the society and every positive change demands sacrifices, selfless attitude, devotion and dedication.
- In many other countries where the income level of people is lower than India have performed better and the problem of child labor have been resolved and tackled in a better manner. Its seems that in India the Government and policy makers lack Zeal and desire without which nothing can be achieved. The Government should also take into confidence the NGO's, the social activist, the human rights activities and general people who are interested to work for the welfare of children and who would be interested to build prosperous India for a better tomorrow.

7.3.10 CHANGES REQUIRED IN RIGHT TO MAINTENANCE AND REHABILITATION

- Perhaps one of the most important among the measures urgently needed in India for the protection of children is adequate health service at school as well as at the work places.
- Every child born in India to Indian citizens should be guaranteed the right to be maintained at the expense of the state. Provided;
- The child has no parents or relatives; or
- Whose parents are ill or unable for some other reason to care for them properly; or
- Whose parents ill treated, abandoned or seriously neglected them; or
- Whose parents income falls below the poverty line as determined by the government;
- Amendment should be made in Article 45, viz The State shall direct its policy towards the establishment of children Homes to nurture and bring up all the children who qualify for their maintenance at the expense of the state.
- To increase rehabilitation and reintegration schemes there is a need for development of bi-lateral and inter-state
- There should be extensive rehabilitation provisions and Government should give utmost priority to this aspect.

7.3.11 CHANGES REQUIRED IN PROTECTION OF RIGHTS OF DISABLED CHILD

- To tackle this problem endeavour should be made to create awareness in the society and to resolve the problem by taking preventive measures during pre-natalantenatal and at the early infant stage.

- The parents of the children suffering from mental retardation, multiple disabilities and cerebral palsy should be given proper guidance regarding the facilities available for such children.
- The children should be given counseling and encouraged to join vocational training depending on the category of their disability.
- The vocational training should enable the child to earn a livelihood and develop a sense of economic security.
- Children who are unable to undergo any vocational training due to severe disability must be given financial assistance from the welfare fund.
- The welfare schemes for rehabilitation of such children must be implemented strictly. The schemes should also be reviewed periodically to meet the needs of these children as per the changing circumstances.
- The media should be used in educating the society about the ways to prevent the disabilities and also on the need to eliminate the superstitions and taboos with respect to such children. The attitude and mindset of both the society and the family should change towards these children.
- A continuous research as part of the legal project to make relief more effective must be undertaken.
- Technology must be used to develop simple and economical devices to assist these children in their daily activities and also to make the public places more friendly, accessible and sensitive to their needs.
- The government should make appropriate provision in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 for providing permanent accommodation known as 'shelter homes' which should provide food, medical aid, care, nursing,

occupational therapy and should be managed by experts in the above mentioned fields.

7.3.12 CHANGES REQUIRED IN ADOPTION MATTERS

- The law relating to Adoption should be made uniform for the application of all persons in India who wishes to adopt child.

7.3.13 MISCELLANEOUS

- India should have special local bodies at the grass-root level, who will have the power to act suo moto whenever they come across any infringement of a child's right.
- The peoples, especially in the rural and backward areas, should be made aware of their rights. For this, education is an absolute necessity.
- Another thing we need is the development of a community conscience in the field of child justice. Without which sustainable development will be a mockery of democracy.
- There is need to bring consciousness among the children so that they may be aware of their constitutional right and get relief accordingly. This is again possible with the help of radio, television, spread of education and illiteracy campaign.
- Preventive laws should be enacted. It's better to prevent than penalizing the person who violates law.
- Existing laws should be thoroughly scrutinized and the loopholes should be removed.
- NGO's should be given more power and active Government help.
- Parents should be properly educated so as to enable them to have better understanding for their children's rights.
- Appointment of Bal Dharmadhikari by the Parliament, Bal Palaks in the States and Bal Officers at District and Inspectors at Taluka Level to look after the welfare of the children.

- There should be Monitoring body which would keep a watchdog on the proper implementation of laws related to children and also to give suggestions to the State Government.
- Another strategy for protection OF child rights could be **Multidisciplinary Partnerships**. The underlying philosophy of such initiatives is the philosophy of partnership among multidisciplinary professionals. As the child rights protection mechanism in the country is elementary and Such an initiative alone can address the issue. It not only provides a networking platform amongst organisations but also provide linkages to support systems that facilitate the rehabilitation of children in need of care and protection; to work together with the allied systems (Police, Health Care, Juvenile Justice, Transport, legal sys~ems, Education, Communication, Media, Political processes and the Community) with a view to create child friendly systems; and to advocate for services for children that are inaccessible, non existent or inadequate. **CHIIDLIN** - A Child Protection Device Based on Partnerships- is one such initiative, which has achieved a fair degree of success.
- Parents should try harder to communicate with their children. They should not ignore the child, not only in normal circumstances but also with specific issue of media. They should encourage their children to speak and discuss with them the films and TV programmes they have been watching so that, the child does not have misconceptions about the happenings on TV and films.

7.3.14 AWARENESS REQUIRED FROM THE PUBLIC

- When you see adults exploiting or abusing children, intervene on behalf of the victim child.
- When you encounter a neglected destitute or orphan child; help him/ her to get in touch with a NGO working for children.
- When you notice a child/ youth involved in a delinquent act, advise him, and politely admonish him.

- When you notice a child in danger of being harassed by adults, help her to contact her family.
- When you see a child/ youth with drugs, remember he/ she is a victim of circumstances; counsel and guide him/her. When you come across a child who has committed an offence with adult instigation, be sure to book the adult, as he/she is the main culprit.
- Do not apprehend the child and take the side of the adults through that would be the easiest thing to do. Do not pass by, just because it means extra efforts from your side.
- Do not beat or put him behind the bars nor cause him any trauma.
- Do not presume that a destitute/ neglected child is there by choice or is a prostitute.
- Do not threaten him/ her, nor book some case on him/ her. He is not the abuser but the abused.

NGOs have a significant roles and crucial tasks in the struggle for the realization of the rights of child. Advocacy and lobbying will also be necessary in support of proposals for law reform and standard setting Lobbying efforts can bring about law reform as in the Mathura rape case, involving the rape of a girl in custody led to the reform in rape laws.

To summarise we can say there is an urgent need for a comprehensive child care/ development legislation, which would combat cruelty, abuse, exploitation and child right violation which appears to be on the rise with each passing day. There should be a separate and adequate legislation, dealing with child rights, child sexual abuse, child trafficking, child neglect, atrocities against children, exploitation, child labor, rehabilitation, special protection to children in institutions, etc., providing for stringent forms of punishment against offenders. All the offences against children should be considered grave and cognizable in nature under the law and the onus of proof in any trial should lie upon the offender considering the vulnerability and helplessness of children.

There is, at present, neither a comprehensive law nor a policy to deal with child sexual abuse. Legal intervention is presently in the form of investigations which start with registration of offences under the earlier Juvenile Justice Act, 1986 or the present Juvenile Justice (Care and Protection of children) Act, 2000 or the Indian Penal Code or the Prevention of Immoral Traffic Act 1959 (amended in 1986).

These suggestion makes me to mesmerize the laudable saying of Swami Vivekananda----- "Arise, awake and stop not till the goal is reached". Because "We want a society where people are more important than things, where children are precious; a world where people can be more human, caring and gentle".⁴¹⁸

"If we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children. And if they will grow up in their natural innocence, we won't have to struggle, we won't have to pass fruitless, idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously or unconsciously, the whole world is hungering."

--Mahatma Gandhi

* * * * *

⁴¹⁸ Archbishop desmond Tutu at the meeting of the Eminent Persons Group in he Innpace of Armed conflict on children, New York.