



## **CHILD RIGHTS AND PROTECTION: AN INTERDISCIPLINARY FIELD OF LAW**

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### **ABSTRACT**

*“A child is a beam of sunlight from the Infinite and Eternal, with possibilities of virtue and vice, but as yet unstained.”* — Lyman Abbott, American Congregationalist minister.

Asia is a large and populous continent where 60% of the world's population resides. In terms of only the child population, India has the highest child population in the world followed by China. As children are the most vulnerable citizens of the society. The phase of childhood is considered as the age of innocence, freedom, joy and play. At this point of life, a person hardly shoulders any kind of obligation or responsibility and they feel no liability towards anyone. This article discusses about the challenges faced by a child either in terms of crime or, due to the thinking of society and also highlights the legislation framed to overcome these challenges. The article also attempt to focus on the shortcomings of the enactments or their poor implementation.

### **PROLOGUE**

As it is evident, that children portray a most significant proportion of our society and are the most vulnerable segment of society. Thus, they needed to be protected from the harshness of the world outside. Through the eyes of Nelson Mandela, Former President of South Africa – *“Safety and security don't just happen they are the result of collective*

*consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear.”* And not only they need to be protected but also they need their distant voices to be heard.

In former times, children were recognized as mini people thus possessed mini rights. According to many researchers, in the back century *study of childhood* has never catered the attention of society because this never occurred to them that there is a need of reasonable classification between individuals thus they never knew that they were doing something wrong; But as the time varies, there was a sense of feeling about childhood and this field of study gained consideration, people started considering children as specific being with specific needs, requiring specific care as well as specific measures of protection.

According to some historian the concept of children's rights took its roots well before the 20th century, as soon as the adults came to consider children as specific beings with specific needs and profile. In this whole period of time many legislations, charters, committees, schemes etc. were formed in order to prioritize safeguard and protection for children as well as to cater the needs of children. International conventions or committees as well as Indian legislation played an important role in relinquishing the crimes against children.

In furtherance of these initiatives many more issues were resolved by the legislations i.e. issue of child labour, issue of child education, issue of child marriage, issue of child trafficking, issue of child adoption, issue in difficulty of taking stock of children voice, issue of malnutrition, issue of child sexual abuse etc.

**What does it mean to be a child?**



As *study of childhood* had always been a interdisciplinary field of study therefore, there has been many ways for defining the term 'child'. Although, at last International law gives the status of child to the persons who are below eighteen years of age it says- 'child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.'<sup>1</sup> While, Indian law remains ambiguous, the law in our country makes provisions for child in multi-sectoral aspect; different definition for different aspect of law for instance, Child Labour (Protection And Regulation) Act, 1986 and The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 states that, child means a person who has not completed his fourteenth year of age. Whereas, The Plantations Labour Act, 1951 and The Motor Transport Workers Act, 1961 provides that, child means a person who has not completed his fifteenth year. On the other hand, The Prohibitions of Child Marriage Act, 2006 asserts, child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. However, there are few Acts that concurs with the opinion of UN convention regarding the child age, The Juvenile Justice (Care and Protection of Children) Act, 2015 and The Protection of Children from sexual offences Act, 2012 both considers that, "*child means any person below the age of eighteen years*" and not only this, to determine the criminal liability of a child the age is seen in a more different way the Indian Penal Code, 1860 asserts criminal liability on a child at the age of twelve years, below seven years no liability arises and between seven to twelve

years the liability conferred upon maturity of child.

As every act is brought with a different objective therefore, in order to solve their purpose of establishment the term 'child' has been defined differently. In Indian law age of child is determined through two expressions minor and major. However, these expressions has created an ambiguity and confusion so, in anticipation of relinquishing this obscurity Indian Majority Act, 1875 was adopted, which clearly states that, "*Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.*"<sup>2</sup> But the act also states that nothing in the act shall affect the capacity of any persons to marry, dower, divorce and adoption as well as the religion or religious rites therefore, the incongruence is still there.

### **EMERGENCE OF CHILD RIGHTS**

History of child rights has been a longer journey through time and space therefore this has always been difficult to determine the date when history of child rights begins. Indeed, this specific field of restorical interest was born in 1960 with the publication of famous book "*Centuries of Childhood, A Social History of Family Life*" of A French historian Phillippe Aries in which he mentioned that the concept of children's rights takes its roots well before the 20th century, as soon as the adults came to consider children as specific beings with specific needs and profile. In back 17th century, the mortality rate of infants increased leading to limited size of the families thus the adults tends to track down all the family archives in order to determine the reason behind the infant mortality and this

<sup>1</sup> Article 1 of the Convention on the Rights of the Child, 1989

<sup>2</sup> Indian Majority Act, 1872 [section 3]



expression was translated as a sense of feeling for childhood, for the first time, child were considered as specific beings requiring specific measures for protection. After this, there was a time of Industrial Revolution and child labour in the factories has been denounced as one of the most shameful events in the industrial revolution, there was a huge demand of child labour as well as supply of child labour, But by the time of second industrial revolution state intervened with “Swiss Factories Act, 1877.” In the same way, as the time was revolving new problem came into shape with their emerging solutions, but there was no permanent solution until the World War 1; in the history of child rights, period after the World War 1 was of particular importance during 1919, the newly formed “league of Nation” established a committee on child welfare known as “Child Welfare Committee” was the first committee for the welfare of child with an intention to circulate the best practice made for the protection of children, and in the year 1924, league of nation adopted the declaration of the rights of the child which came to be known as “Declaration Of Geneva” and an expanded version of this was adopted by United Nation in 1959 the declaration recognizes that, ‘Mankind owes to the child the best that it has to give’, but was hardly implemented. In 1979, the UN held the International year of the child and there a conference was held on children’s rights and there a proposal was made on adopting a convention on the rights of child and finally, the convention was unanimously adopted on 20th November, 1989, popularly known as United Nation Convention On The Child Rights [UNCRC] according to which, all children should grow up in the spirit of peace, dignity, tolerance, freedom equality

and solidarity and created an obligation for all Nation to provide these rights to children by law. Then in the year 1992, the Government Of India ratified the convention. Before this ratification India, has already adopted a number of laws and formulated a range of policies to ensure the best interest of children; for instance, The Guardian and Wards Act, 1890.

### **VULNERABILITY OF CHILD AND THE LAW IN INDIA**

It is clear that children are the most vulnerable citizens among all individuals, therefore they are too much prone to all the risks and perils and this is compounded by the social inequalities they are facing because according to Thomas Jefferson; “*There is nothing more unequal than the equal treatment of unequal people*”, and Article 14 of the Constitution of India also accords the same thing that in pursuance of justice reasonable classification can be done to ensure equality among people. Hence, it is justified that this specific strata of society needs specific protection as their lives are struggling for a better future revolving around various issue of exploitation and abuse, actually, abuse can be of physical, sexual and mental as well; and it can be mounted by any other person whether any adolescent, or a teacher or a family member and it has been found that there is a large number of cases in which children are sexually exploited by their own family members.

- **Child Sexual Abuse or exploitation and law reforms**

**Child Sexual Abuse** - According to report of NCRB<sup>3</sup> [2018]: as many as 109 children were sexually abused everyday in India, sexual

<sup>3</sup> National Crime Branch Bureau



abuse is found as the most prevalent crime against child, sexual abuse basically occurs when a child is used for a sexual gratification by any other person; an adolescent or an adult. The sexual exploitation can be committed through many crimes, for instance; offence of rape and sodomy, offence of outraging modesty, unnatural offences or child Marriage, pornography or child prostitution and so on. Although there are various legislative enactments dealing with these crimes but these enactments do not specifically address child sexual abuse or strictly speaking there is no comprehensive law dealing with child sexual abuse. THE INDIAN PENAL CODE, 1860 states about the offence of Rape and Sodomy. Rape has always been a too tactful to be discussed and in IPC; the term 'Rape' is too specific: it does not even include boys thus considering child specifically is too far to be reached. Now anything less than rape is defined under IPC is 'outraging the modesty' and this is also restricted for girls thus there is highly inadequacy in considering child sexual abuse, although there is another offence asserted in IPC i.e. 'Unnatural Offences' this area somehow considers the offence against male child.

In the leading case of *Sakshi v. Union of India*<sup>4</sup>, the court gave the following directions:

In holding a trial in the case of child sex abuse or rape:

1. A screen or such arrangements may be made wherein the victim or witnesses (who may be as equally vulnerable as the victim) do not see the body or face of the accused;
2. The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in

writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;

3. The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

As above mentioned that the laws dealing with sexual offences does not recognise child sexual abuse, they treat the child victim in the same manner as they treat an adult victim, they do not consider the vulnerability of a child and the trauma faced by them during the proceeding, for a child, Justice not only implies seeing the accused in custody but they also needs a trauma free life.

#### **Child Trafficking: leading to prostitution and pornography** - Child Trafficking is also

considered as predominant crime in India. Actually trafficking is a process of recruiting, contracting, procuring or hiring a person for CSE, i.e. commercial and sexual exploitation. It is often seen as girl children are trafficked into prostitution and boys are trafficked into forced labour and sodomisation, and these children are then seen as the victims of pornography or outraged modesty. Sexual trafficking actually involves business in brothels, massage parlours, bars, leading to prostitution and pornography. Whereas, commercial trafficking includes domestic labour, begging, camel racing and organ transplants.

In order to prevent trafficking, a new legislation came into place, THE IMMORAL TRAFFIC PREVENTION ACT, 1986 the act basically recognizes the commercial sexual exploitation which means a person gaining through the sexual exploitation of a child or a woman. The act outlets some provisions

<sup>4</sup> Sakshi v. Union of India Case No. 33 of 1997



related to rescue of victims, a search without warrants, considering offences as cognizable and many more.

In spite of the prevalence of act still there are many cases of child trafficking and there are certain reasons for the failure of the act. The foremost gap is that the act is restricted to the context of CSE unless there is a gain from the exploitation the act will not be rendered as an offence thus ITPA is required to deal with the restrictions imposed and Secondly, it does not recognise the age of victim when abducted but looks at the age of victim when got rescued, thus the traffickers took the advantage of it they make sure that the age of victim rescued should be 18 years or above and in this way the victim got turned into offenders and the vague reports of doctors are also the reason of these crimes thus, there are some changes required to be amended in the act.

**Child Marriage** - As child marriage is also a form of sexual abuse, child marriage is one of the offence committed under the name of traditional practice since many years this offence is prevailed in India and mostly found in rural areas or areas having lack of education and this area of crime has gained too much concern leading to an important legislative enactment i.e. PROHIBITION OF CHILD MARRIAGE ACT, 2006 supplanted 'The Child Marriage Restraint Act, 1929.' The Prohibition of Child Marriage act deals with the prevention of child marriages as well as the consequences of child marriage, the act provides the age of marriage: '18 years for girls and 21 years for boys' it considers a child marriage as voidable that means considered valid unless declared void and onus of declaring marriage as void lies on

child and guardian filing for legal proceedings.

In case of *Seema V. Ashwini kumar*,<sup>5</sup> The Supreme Court of India on 14th February, 2006 made it mandatory for all marriages to be registered and asked the authorities to implement the amended rule in three months. The judgment could have significant impact on child marriages.

Although the act has few shortcomings that is why the child marriages still prevails in our country and the foremost is that it considers child marriage as voidable not void and Secondly, the onus of declaring such marriage void lies on child and legal guardian filing for legal proceedings and it is obvious, that parents who themselves carried out such marriages may never take such steps.

#### **PROTECTION OF CHILD FROM SEXUAL OFFENCES ACT, 2012 (POCSO)**

The Act has come into force with effect from 14th November, 2012. This a comprehensive law enacted to provide protection for sexual assault, sexual harassment and pornography, while safeguarding the best interest of child at every stage of the judicial proceedings by incorporating 'child-friendly mechanism for reporting, recording of evidence, investigation and speedy trial of offences through designated special courts'<sup>6</sup>. The act also defines the age of the child as any person below the age of eighteen years and also defines all types of sexual assaults, including penetrative and non-penetrative assaults and also mentions the circumstances when the accused is one of the family member or in a dominant position like a teacher or a doctor. The Act provides the stringent punishment for the traffickers. Basically, the act deals

<sup>5</sup> Seema V. Ashwini kumar Case No. 291 of 2005

<sup>6</sup> model guidelines under section 39 of pocso act, 2012



with both ‘the measures to prevent the crime’ as well as ‘the aftermath of crime.’

There are certain provisions made which almost covers the loopholes in the former acts, discussed above like the POCSO Act recommends a child welfare committee for the safety and security of the child, Act also provides special courts for the judicial proceedings that conduct trial *in-camera* and without revealing the identity of the child in child-friendly manner and it ensures that a parent or any trusted person must be present at the time of testifying, while interviewing of child it is make sure that a trained police officer or an expert lead the interview. In order to secure better future of the child or to make his rest of the life trauma-free the court must disposed off the case within a year and ensure a proper compensation must be paid to the child. The section 39 of the said act, states that state government is required to make guidelines for the use of persons including NGOs, professionals and experts trained in knowledge of psychology or social work etc. to assist the child at the trial and pre-trial stage.

In this way the POCSO Act provide a means to justice for the children and also proves to be an effective deterrent in curbing the occurrence of such offences.

- **Child Labour: Economic Exploitation of Child**

Child labour is an act of exploitation, which basically, deprives the children from their childhood; it is another group of vulnerable children subjected to abuse or exploitation.

The term ‘child labour’ often includes activities such as helping their parents around the home, assisting in family business, earning own pocket money or earning to

fulfill the house needs and so on but these activities are not the worst forms of child labour; worst forms of child labour involves the activities where children being enslaved, exposed to serious hazards or separated from their family at a very early age, where children work under abusive and exploitative conditions that are clearly dangerous to them. According to a report of International Labour Organisation (ILO), in 2017 there are around 12.9 million Indian Children engaged in work, although there is a large number of children that are unreported. Child labour not only affect physically but also the mental status (Tender mind) of children.

In 1986 a new act was framed CHILD LABOUR PROHIBITION AND REGULATION ACT, 1986 (CLPRA) with a motive to curb the child labour and ensure unflinching punishments to offender which was later on amended in 2016 because of few loopholes. The CLPR Act provides the distinction between the age of a “child” that is any person below the age of 14 years, and of “adolescent” that is children lies in the age between 14 to 18. The act prohibits the employment of a child in any employment including as a domestic help because there are various cases found in which child are used or suffered by their own guardians in the name of domestic help whereas, an adolescent is allowed to be employed except in few enlisted hazardous occupations<sup>7</sup>. The act ensures that the offender (employer) pay a compensation of Rs. 20,000 for employing any child in contravention of the act and such compensation shall be deposited in the child labour rehabilitation-cum-welfare fund.

In our legal framework, there are few other acts that also enshrines the same objective that is to prevent child labour and these are: The first one is FACTORIES ACT, 1948 –

<sup>7</sup> CLPRA(Amendment) Act, 2016



This act actually prohibits the employment of children below the age of 14 years in any factory and the act also laid down the rules regarding the age of the child, pre-adults or adolescents. The second one is THE MINES ACT, 1952 – this act prohibits the employment of children below 18 years of age in a mine. The CONSTITUTION OF INDIA, 1950 does, however Article 24 provides that, “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” and in Article 39(e) accords that “the health and strength of workers, men and women, and the tender age of children are not abuse and that citizens are not forced by economic necessity to enter avocations unsuited to their age.” In a landmark Judgement ‘*M. C. Mehta v. State of Tamil Nadu (and others)*’<sup>8</sup> it was held that: child should not work and an adolescent also not work at least in hazardous industries like match factories as in the case, other than this the court gave certain directions to improve the quality of children employed in the factories by relying on Article 30(d) and Article 45 of the Constitution of India 1950 and to ensure that the directions are properly looked out court also made a committee for that and insisted on compulsory education for children.

### JUVENILE JUSTICE ACT

This legislative enactment first took place into 2000 as ‘Juvenile Justice (Care and Protection) Act, 2000’ for the protection of children and this was later on amended in 2015 as ‘Juvenile Justice (Care and Protection of Children) Act, 2015 and came into effect from January 15, 2016. The act deals with two categories of children i.e.

“child in conflict with law” and “the child in need of care and protection” this means both the juvenile as offenders as well as the victims. The act deals with all area of study: For instance, the child victimised by abuse and exploitation; whether it is physical, mental, sexual or economical and it also deals with the children who are the offenders, The 2015 amendment act was proven as a boon for the children in conflict with law as it not only deals with crime and punishment but it also entails the process of rehabilitation of children the objective of the act is to prevent the crime not the criminal. A proper Juvenile Justice Board has been organized under the act for the best interest of the child.

The act also provide provision related to the adoption of child; it ensures that a child should be adopted to a family through a legal process so that it remains in the eye of government and the child become lawful child having all the rights, it accords a proper process for the domestic and inter-country adoption of orphans or abandoned children, it states that adoption of a child is final on the issuance of an adoption order by the court and this has been seen as a shortcoming because this procedure renders a delay in adoption due to heavy load on the courts due to which a little amount of adoption cases has been dealt by the courts.

Therefore to overcome this issue Maneka Gandhi<sup>9</sup> introduced a new Juvenile Justice Amendment Bill, 2018. The bill seeks to amend the juvenile justice act to empower the district magistrates to issue orders for the purpose of adoption in order to expedite the proceeding so, that all the pending matters are transferred to the district magistrates and can be heard timely.

<sup>8</sup>M. C. Mehta v. State of Tamil Nadu and others [1996] 6 SCC 756 (10 December 1996)

<sup>9</sup> women and child development minister



• **Infringement Of Child's Right To Life and Allied Laws**

Right to Life i.e. Article 21 of Constitution of India, 1950 reads as, “No person shall be deprived of his life or personal liberty except according to a procedure established by law.” This right has been held as the Heart of the Constitution and the interpretation of this article has changed over the years and the various rights fall under it. This right of the constitution is not merely the physical act of breathing it has a much wider meaning which includes right to live with human dignity, right to livelihood, happiness, health etc. In The Case Of ‘Budhadev Karmaskar V. State Of West Bengal,’<sup>10</sup> it was stated that the word life in article 21 means a life of dignity and not just an animal life; which means that right to life.

In the words of Charley Resse: “if you believe in the right to life, then you must believe in the right to have the means to defend that life.”

**Infanticide or Female Foeticide** – As above mentioned right to life includes many other rights and people are not getting those rights but when it comes to children then considering other rights is a distant thing children are not even get to live a life. In Indian context male child are preferred over girl child, thus female children are especially vulnerable to foeticide or infanticide. This is the most prevalent offence in India since 1980s when the first abortion related law came into place i.e. MEDICAL TERMINATION OF PREGNANCY ACT, 1971 – the act provided legal abortion in most states, but specified the legally accepted reasons for such abortion like; to save the life

of mother or to avoid grave permanent injury to either physical or mental health of the mother, but with the time and advancement in technology people started misusing it and then Government Of India passed the PRE-NATAL DIAGNOSTIC TECHNIQUES (Regulation and Prevention of Misuse) ACT, 1994 which was further amended into PRE-CONCEPTION AND PRE-NATAL DIAGNOSTIC TECHNIQUES (Regulation and Prevention of Misuse) ACT, 2004 [PCPNDT]: which provided that no person shall conduct or cause to be conducted any prenatal diagnostic techniques to determine the sex of the foetus to avoid the foeticide.

In a landmark judgement, ‘Centre for Enquiry into Health and Allied Themes (CEHAT) and Ors v. Union of India and All India Reporter 2003.’<sup>11</sup> Supreme Court issued a number of guidelines for the central government, the central supervisory board and the state government in order to implement the provisions of the act more rigorously. However, still the intended goal of the act is yet to be achieved because of poor implementation of the Act therefore, there is a need of proper implementation and awareness of such laws because “we believe every child is created equal with the right to life.”

**Adoption of Child** – Adoption of a Child is also included in the Right to life, every child has a right to be adopted by a willing parent and to have a name, nationality as well as a family. Matters related to it are governed by personal laws in India. For instance; Adoption of Hindu child is governed by HINDU ADOPTION AND MAINTENANCE ACT, 1956 whereas

<sup>10</sup> Budhadev Karmaskar V. State Of West Bengal, (2011) 11 SCC 538

<sup>11</sup> Centre for Enquiry into Health and Allied Themes (CEHAT); and Ors v. Union of India and All India Reporter 2003 [2001] 3SCR 534





Adoption of children belongs to other religion is governed by GUARDIANS AND WARDERS ACT, 1890. And this shows that religion plays an important role in such matters which renders a strain in the attainment of the object of the Act. Thus, there is a précised need of a uniform law on adoption and it also arises as a part of fundamental rights: Right to life<sup>12</sup> and Right to equality<sup>13</sup> and also according to some international instruments to which India is obliged i.e. the CRC and the Hague Convention.

**Child's Right to Education** – Education is a key to many locked problems. In the words of Nelson Mandela; *“Education is the most powerful weapon which you can use to change the world.”* Therefore, this right is the most salient right in a child's life. Earlier this right was accorded in Constitution as a directive principle [Article 41] and after getting concerned with the issue, Right to Education enshrined as Fundamental Right of the Constitution of India [Article 21-A]<sup>14</sup> which states that, *“the state shall provide free and compulsory education to all children to the age of six to fourteen years in such manner as the state may, by law, determine.”* After a while, the government came up with an idea to enact a legislation i.e. RIGHT TO EDUCATION ACT, 2009 which came into effect on 1st April, 2010. The act represented consequential legislation envisaged under Article 21-A of Constitution of India, as the objective of the act is to highlight the importance of education and ensure every child has the same.

Although, even after the establishment of the act and insertion of fundamental right, the objective has not been accomplished yet, and

this because of poor implementation of the act; as the title of the act incorporates the words, “Free and Compulsory” that means every child has a right to education and the all the expenses incurred in that are paid by government; no child is liable to pay such amount, either the government or the legal guardian is liable for that but there is one loophole, that it is obvious now school fees [Tuition fees] would be the liability of government but what about the other expenses like the travelling ones, stationery, sanitary facilities etc. without these a child cannot study properly and this travelling problem is the biggest contributing factor to girls dropping out and none of these are properly looked after by the government. Other than this, the act provides elementary education just for the children of age six to fourteen, but this is not sufficient; the age need to be extended to eighteen years according to the Indian Majority Act, 1875. So, that a child become major or adult and can complete further studies on own. The next biggest shortcoming of the act that it does not include the children with disabilities and does not make any special provision for awareness of girls education thus infringing the Fundamental Right [Article 14] of the constitution i.e. Right To Equality according to which, *“equal treatment of unequals is as bad as unequal treatment of equals”* hence, there is a need of reasonable classification for the children with disabilities as well as girls. Not only this, the other shortcoming is that the act considers Government School, most of which do not focus on quality of learning thus there is a need to look that matter or strictly deal with private schools in this matter.

<sup>12</sup> Article 21 of Constitution of India, 1950

<sup>13</sup> Article 14 of Constitution of India, 1950

<sup>14</sup> Inserted by the Constitution 86<sup>th</sup> amendment Act, 2002



**Child participation or Child's Right to be heard** – The convention on the rights of child [CRC] deals with right of participation of child<sup>15</sup> which states that participation applies to all children and even babies can express a view and the responsibility lies in the hands of adults. This right basically, means the right of child to express his or her opinion and to influence the decision to be taken. For instance, The Right to be heard in the Judiciary: Child participation must be authentic and meaningful and this requires a radical shift in adult thinking and in our country's tradition there is a need of change that made a misconception regarding the point of view that a child is dependent on father figure thus this need to be changed.

In our **Constitutional Framework**, the constitution of India encompasses most of the rights that are enshrined in UN convention on the rights of the child. It accords rights to children as citizen of country and there are few rights that are specifically subjected to children and their well being including fundamental rights as well as the directive principles. For instance, Article 19(1) (a), provided for the freedom of speech and expression as a fundamental right to every person in India, and nowhere is it mentioned that children are to be excluded, yet the exclusion does take place because of the patriarchal norms governing the attitude of the society and this can be overcome by taking stock of children's voice. Although in the past few decade there are some developments regarding this by constituting bal panchayats or youth clubs or by hearing the child voice in the court, but still has a lot to accomplish.

### **INSTITUTIONAL STRUCTURES FOR THE CHILDREN**

In these few years, it has been seen that various steps were taken by the government to ensure the protection of the children. For instance, new acts came into place, various institution formed, many NGOs created awareness for the child development and so on. Under the Juvenile Justice Act, 2015: observation homes, Special Juvenile Police Units, Child Protection Units, and After Care organizations were formed to ensure that the after-life of both the victims as well as the offenders is safe and sound and especially that offender are given a proper chance to rehabilitate and secure their future. Under the Family Courts Act, 1984 family courts were framed to ensure that proceeding held in these cases are proper and child-friendly.

Under the National Commission for Protection of Children Act, 2005; **The National Commission For Protection of Child Rights (NCPCR)** is established. This statutory body of Government of India, set up in March 2007 to protect, promote and defend child rights. As the government of India ratified the UN Convention on the right of the child in 1992, the establishment of this commission is the historic milestone to translate the commitments into action. It was comprised of seven member out of which two are women to develop a safe, secure and child-friendly environment for the children, It empowers the state government to designate the courts as Children Court and every court has a public prosecutor with an experience of seven years, these courts are framed to ensure speedy trial in the child related cases. The commission took significant step for the development and protection of children.

Although there are few shortcomings; in a case, "*National Commission for Protection*

<sup>15</sup> under article 12 to 17 plus article 31 of CRC



*Of A Child Rights V. Dr. Rajesh Kumar*<sup>16</sup> there was a dispute between the NCPCR and state commission of west Bengal over the jurisdiction. The court concluded that both the commissions have to work for the best interest of the children in a spirit of cooperation and that there were no jurisdictional issues involved. This is really lament situation that the institution set up for the protection of children have virtually forsaken them in a fight over jurisdiction, and in these types of fight the children have been forgotten. But the court concluded it very immaculately.

Other than the commission there are various schemes for the protection of child articulated by Integrated Child Protection Scheme (ICPS) of the Government of India which bring multiple schemes under one comprehensive scheme.

### **CONCLUSION**

It is an eternal thought that children are the future of our country. The former president Mr. Jawaharlal Nehru also said that *“The children of today will make the India of tomorrow. The way we bring them up will determine the future of our country.”* But the delinquency arises here that how many people of our country implies with this thought, the attitude of our society towards this problem is not satisfactory.

Over the past few decades, to protect this vulnerable strata of the society many legislation like, POCSO, CLPRA, JJA etc., or many new NGOs, Orphanages, Schemes and commission like NCPCR are formulated. Other than this our Constitution of India guarantees too many rights to children as a citizen as also as a child right through fundamental rights and directive principle,

yet the situation still exist even there is an upsurge in the crimes related to children and it is fact that in spite of these schemes, legislation, the Right to Life of children is fully transgressed: ‘Every second child under five-years old is malnourished; 1 in 4 adolescent girls between 15–19 years old is married; 30 of 100 girls who enter school do not complete primary-level education.’<sup>17</sup> And this is the worst situation of our country.

Violence against child is a multifaceted problem, never occurred because of single cause but the most important cause is the patriarchal norms and societal attitude towards these problems, even after having fundamental rights why children are still precluded from it because of the thinking and the poor implementation of these legislations, thus there is a need of proper interpretation of these legislation and creating awareness regarding it. So, that society consider child as a specific citizen having all the rights, because changes do not just happens they are the result of efforts and initiatives and it is necessary to revert back to each and every situation. For instance; the steps government took during the COVID-19 regarding children studies; they set up **virtual classes** so, that the studies of children are not hampered and their health is also not compromised.

In the words of David Vitter, *“I continue to believe that if children are given the necessary tools to succeed, they will succeed beyond their wildest dreams.”*

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<sup>16</sup> SLP (Civil) Number 34251 OF 2017

<sup>17</sup> Accessed online at [azadindia.org/social-issues/status-of-children.html](http://azadindia.org/social-issues/status-of-children.html)