

PROTECTION OF CHILDREN RIGHTS: JUDICIAL ACTIVISM IN INDIA

Jaimala Chahande, Visiting Faculty, PGTD of Law, RTMNU, Nagpur, Maharashtra

ABSTRACT

Child is entitled to special care and assistance due to their dependency and immaturity. As human being, children have the basic human rights including social, economic and cultural rights. All over the world efforts are taken to protect these rights of children. Effect of Child abuse and exploitation on child are serious and stunted the potential development of many children. Despite of all these international and national efforts still the children in India faces the problem of child abuse and child exploitation. The role played by the judiciary to safeguard and protect the rights of the children as a guardian of fundamental rights through issuing direction or giving advice to the Government are commendable and must be appreciated.

This article has discussed the concept of judicial activism, the rights of child and who is child? This article has study about the international and national efforts taken for the protection of children rights including provisions under Constitution and legislative measures. This article has given the special emphasis on explanation of the role played by the judiciary in the protection and safeguard of the children's rights.

I. INTRODUCTION

India, a country with 37.24 Cr¹ children in the age group 0-14 years, one of the largest child population in the world. The children are the future asset of any nation and India is blessed country to have such large number of child population. Child is entitled to special care and assistance due to their dependency and immaturity. As human being, children have the basic human rights including social, economic and cultural rights.

All over the world efforts are taken to protect these rights of children. The *Universal Declaration of Human Rights* and various child specific international Conventions, Declarations and Charters have been held to protect the interest of the children. The Constitution of India also enshrined specific provisions and inserted other special provisions by Amendment to the Constitution from time to time to comply with international standards, so as to safeguard the interest of the Indian children. The Legislatures have enacted various children-oriented legislations to promote the welfare of the children.

Despite of all these international and national efforts still the children in India faces the problem of child abuse and child exploitation like child labour, trafficking, prostitution etc. because of their tender age, innocence, unable to express their views or feelings, fail to protest due to lack of awareness and physical immaturity. Most of the children suffered violation of their rights irrespective of class, race, caste, religion, gender etc. However, the children from rural area, remote area, weaker section, tribal communities, minorities, orphans, homeless, girl child, migrant, children of prostitutes, children of prisoner mother, illiterate parents etc., are most vulnerable among them. Along with these, poverty, illiteracy and climate change add the problems in the life of such children. Who will become responsible for this situation in India? Who will solve these problems? Or who will protect the rights of the children? These are the questions need to be solved

¹ Children in India 2018 – A Statistical Appraisal - MOSPI <http://mospi.nic.in> › sites › files › publication reports, 26 Oct. 2018.

on priority basis because children are the future of the society and ultimately of nation. Development and growth of nation depend on the proper overall growth and development of children.

In such situation, judiciary step in when two pillars of democracy i.e., legislatures and executives remain in inaction or ignore their Constitutional obligations. The judiciary always come forward to safeguard the rights of downtrodden, destitute, underprivileged persons whether male or female including most vulnerable is Indian children. In most of its judgements, the Courts have been allowing PIL or take Suo moto cognizes to fulfill Constitutional Objects of equality, freedom, justice to all citizens. In doing so, judiciary plays active role within its Constitutional limits to maintain the balance between the work of legislature, executive and judiciary. However, role played by the judiciary to safeguard and protect the rights of the children as a guardian of fundamental rights through issuing direction or giving advice to the Government are commendable and must be appreciated.

This article has discussed the concept of judicial activism, the rights of child and who is child? This article has study about the international and national efforts taken for the protection of children rights including provisions under Constitution and legislative measures. This article has given the special emphasis on explanation of the role played by the judiciary in the protection and safeguard of the children's rights.

II. CONCEPT OF JUDICIAL ACTIVISM

The Judiciary is one of the important pillars in the Democratic Government along with Legislature and Executive. In India, Constitution is the Supreme Law of the Land. In order to maintain the supremacy of the Constitution, the Indian Judiciary has entrusted with the responsibility as a final interpreter and guardian of the Constitution. The most significant function of the Indian Judiciary is to protect and guard the guaranteed Fundamental Rights of the people.

To protect fundamental rights of the individuals against Government's unfair, arbitrary and discriminatory activities, sometimes Indian Judiciary has played an active role to ensure the rights of the people be protected, which is termed as a 'Judicial Activism'.

The term '*Judicial Activism*' has been coined by the American Historian and social critic Arthur Schlesinger Jr. in a January 1947 in *Fortune Magazine* article titled "*The Supreme Court: 1947*"².

According to the *Black's Law Dictionary*, '*Judicial Activism*' is "a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent".

This definition could be interpreted as while making decision the court gives their personal opinion on public policy of the Government if it violates the Constitution (the Law of the Land) and even ready to review their own previous decisions.

The Judicial Activism has its base in the Doctrine of Judicial Review. The power of judiciary to review legislative action is the basic feature of the Constitution³ and so cannot be excluded by constitutional amendment also. Article 13 along with Article 32, Articles 131-136, Article 143, Article 226, Article 227 and Article 246⁴ of the Indian Constitution empower judiciary to declare any law or administrative action, be void if it is inconsistent with the Constitution. Thus, these Articles gives the power of Judicial Review to the Supreme Court and High Courts.

After independence till 1978, Indian Judiciary has played its stereotype role of a strict interpretation of the law and follow the precedent. With the changing time, the judiciary has played a dynamic role by interpreting law in social and humanitarian perspective and also willing to review its own decisions. The judges play an active role when two pillars of democracy do not work judiciously or work arbitrarily or remain in inaction, to protect the civil, political, social, cultural and human rights of the individual.

Judicial Activism in India observed in the dissenting judgment given by the Fazl Ali, J⁵., that the principle of natural justice i.e., no one should shall be condemned unheard was part of the general law of the land and it is incorporated in the Article 21.

² Abhishek Negi, "Judicial Activism and Judicial Restraint - Legal Services India" (available at <http://www.legalservicesindia.com>)

³ *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125

⁴ M. P. Jain, *Indian Constitutional Law* 1702(LexisNexis, Haryana, 6th edn., 2010)

⁵ *A. K. Gopalan v. State of Madras*, AIR 1950 SC 27: 1950 SCR 88

Then the judiciary adopted the new approach by liberal interpretation of Article 21 of the Indian Constitution. In *Maneka Gandhi case*⁶, the Indian Judiciary interpreted the 'Procedure established by Law' on line with 'the Due Process of Law' clause of U. S. Constitution and the term 'Life' and 'Personal Liberty' has been given wide meaning which covering a variety of rights. Since then, different rights have been incorporated under right to life like, right to live with human dignity⁷, right to livelihood,⁸ right to medical care,⁹ right to shelter,¹⁰ right to privacy,¹¹ right to enjoy pollution free water and air,¹² right to die,¹³ right to free legal aid,¹⁴ right to education,¹⁵ and many more, the list is unlimited.

A dynamic approach was adopted by judiciary with allowing public interest litigations (PIL) and relaxed the rule of *Locus standi*. PIL is the result of judicial activism. It serves as a measure to protect the rights of not only individual but also the society as a whole including deprived and vulnerable sections of the community. It also includes social-economic issues distressing the public like, condition of bonded labours,¹⁶ environment and ecological balance,¹⁷ etc.

So, the judicial activism is the philosophy adopted by the judiciary for the welfare of the society enshrined in the constitution and to curb the arbitrary action of the administrators. Judiciary plays its role within the limits of the constitutional provisions to maintain a balance between power of the legislature, executive and judiciary.

Apart from the above socio-economic, administrative and environmental issues, the court played a very active role to protect the rights of the children who are the most vulnerable section of the population and susceptible to exploitation, so need to be study separately.

⁶ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597: (1978) 1 SCC 248

⁷ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746, 753

⁸ *Olga Tellis v. Bombay Municipal Corp.*, AIR 1986 SC 180: (1985) 3 SCC 545

⁹ *Parmanand Katara v. Union of India*, AIR 1989 SC 2039: (1989) 4 SCC 248

¹⁰ *Shantisar Builders v. Narayan Khimlal Totame*, AIR 1990 SC 630: (1990) 1 SCC 520

¹¹ *R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264: (1994) 6 SCC 632

¹² *Subhas Kumar v. State of Bihar*, AIR 1991 SC 420: (1991) 1 SCC 598

¹³ *P. Rathinam v. Union of India*, AIR 1994 SC 1844: (1994) 3 SCC 394

¹⁴ *M. H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548

¹⁵ *Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858; *Unni Krishnan v. State of Andhra Pradesh*, (1993) 1 SCC 645

¹⁶ *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 803

¹⁷ *R. L. & E. Kendra, Dehradun v. State of Utter Pradesh*, AIR 1985 SC 652: (1985) 2 SCC 431

III. CHILD RIGHTS

Children as a human being have enjoy the rights of adults except some like right to marry, right to employment etc. and due to their special needs and care, they have specific rights different from adults. Before discussing of these rights, first it is required to define 'who is the child'?

There is not uniformity in the definition of the child at the international and national standards.

Definitions of child: -

According to the *United Nations' Convention on the Rights of the Child (UNCRC)*¹⁸, 'every human being below the age of eighteen years' is known as 'child'. *International Labour Organisation*¹⁹ set the minimum age of child is to be 18 years in case of Hazardous work and only under strict conditions it is to be reduced to 16. Thus, according to international standard the child is a person who is below 16-18 years age as per the purpose for work.

A number of legislations have been passed by Indian Parliament which defines the word 'child' in different manner in each statute.

According to *The Plantation Labour Act, 1951*²⁰, *The Beedi and Cigar Workers (Conditions of Employment) Act, 1966*²¹ and *The Child Labour (Prohibition and Regulation) Act, 1986*²² a person who has not completed 14 years of age is a child.

As per *Right of Children to Free and Compulsory Education Act, 2009*²³, a child means a male or female child of the age 6 to 14 years.

Other legislations define the word child- like *Factories Act, 1948*²⁴ - a person who has not completed 15 years of age. *The Merchant Shipping Act, 1958*²⁵ - a person who has not completed 16 years of age.; and *The Mines Act, 1983*²⁶ - a person who has not completed 18 years of age.

¹⁸ The United Nation Convention on the Rights of the Child, 1989, art. 1

¹⁹ ILO Convention No. 138 on the Minimum Age Convention, 1973

²⁰ The Plantation Labour Act, 1951 (Act 69 of 1951), s.2 (c).

²¹ The Beedi and Cigar Workers (Conditions of Employment) Act, 1966 (Act 32 of 1966), s.2(b).

²² The Child Labour (Prohibition and Regulation) Act, 1986 (Act 61 of 1986), s. 2(ii).

²³ Right of Children to Free and Compulsory Education Act, 2009 (Act 35 of 2009), s 2 (c).

²⁴ Factories Act, 1948 (Act 63 of 1948), s.2 (c).

²⁵ The Merchant Shipping Act, 1958 (Act 44 of 1958), s.109.

²⁶ The Mines Act, 1983 (Act 42 of 1983), s.40.

*The Commissions for Protection of Child Rights Act, 2005*²⁷ and 2006, defines the child as a person between 0 to 18 years of age.

According to *the Juvenile Justice (Care and Protection of Children) Act, 2000*²⁸; *The Protection of Children from Sexual Offence Act, 2012*²⁹ and *The National Policy for Children, 2013*³⁰ child as a person who has not completed the age of 18 years i.e., below 18-years person is a child in compliance with the definition given under the U. N. Convention on the Rights of the Child.

Thus, by analysing the above legislations it could be said that the person between the age of 0 to 18 is known as the child in India. Different laws in India have different definitions of child so it creates confusion while dealing with the welfare policies for children.

The rights of the children include civil, political, social, economic and cultural rights. There are special rights to protect the child due to their dependency and vulnerability. All the children irrespective of their nationality, religion, race, caste, class, sex or language are deserve equal protection and ensure the enjoyment of all these rights across the world so as to promote their inclusive welfare.

There is need to recognize and protect these rights of the children at the international and national level. The future of the society is dependent on the proper care and nurture of the children at the tender age, so that they contribute in the well-being of the society in future.

IV.PROTECTION OF CHILD RIGHTS AT INTERNATIONAL AND NATIONAL LEVEL

The children were the most neglected section of society in relation to the enjoyment of human or other rights as they are unable to express their grievances. In order to provide protection of the children rights, efforts have been taken across the world and at the national level too. There are lots of international declarations, charters and conventions related to child rights. In India, Constitution itself provides general and special provisions for children and government has also

²⁷ The Commissions for Protection of Child Rights Act, 2005 (Act 4 of 2006).

²⁸ The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000), s.2 (iv).

²⁹ The Protection of Children from Sexual Offence Act, 2012 (Act 32 of 2012), s 2 (1)(d).

³⁰ The National Policy for Children, 2013.

enacted various legislations for the protection and promotion of the children rights. All this is discussed in the next part.

A. International Frameworks

The United Nations has been attempted to give the special status and protection to the children through conventions and declarations. Some of these are mention here.

- ❖ First '*Declaration on Rights of Child*'³¹ was adopted by the General Assembly of UNO on 20th Nov., 1959. This Declaration has provided 10 rights to the children like- the child shall enjoy all rights without discrimination; enact the laws which for the promotion of inclusive growth of the child; right to home and nationality; enjoy social security; special care for handicapped child; free and compulsory education for all children; protection against cruelty and exploitation. However, this Declaration was put forward general principles which were non-binding in nature.
- ❖ Hence, the UN General Assembly adopted the '*United Nations Convention on the Rights of the Child*', 1989³². It is the first legally binding instrument and is a principal international treaty in relation to the protection of children rights. The convention consists of 54 Articles that address the basic human rights i.e., civil, political, social, economic and cultural rights and special rights of children everywhere. Some of these rights includes- right to survival, education, protection, participation, health, family life etc. These rights are set out for development of full potential of the child.
- ❖ *The World Summit for Children* was held at the UNO, on 30th Sep. 1990³³. It adopted the programmes for the earliest implementation of the Convention on the Rights of the child and the Plan of Action for implementation of the World Declaration on the Survival, Protection and Development of Children.

³¹ UN *Declaration on Rights of Child* G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354, 20 November 1959, (Principles 1-10).

³² The United Nations Convention on the Rights of the Child, 1989.

³³ UN *The World Summit for Children*, 30th Sep. 1990.

- ❖ *International Labour Organization Worst Form of Child Labour Convention, 1999*³⁴ has focus on the importance of free basic education; removal of the children from all worst form of work and to provide for their rehabilitation and social integration.
- ❖ Other general international instruments like *International Covenant on Civil and Political Rights, 1966 (Art. 23 & 24)*; *International Covenant on Economic, Social and Cultural Rights, 1966 (Art. 10)*; *Universal Declaration of Human Rights, 1948 [Art.25(2),26(1)]* provides social protection to all children born in or out of wedlock.
- ❖ There are various regional conventions and declaration adopted by the countries.

These international instruments are set out guiding principles to all the ratified states to enact the legislations to ensure the protection of child in everywhere.

B. Indian Framework

The Constitution of India has provided general and special rights to every child in India. The Government has been enacted several laws, rules and regulations on the basis of Constitutional provisions and on the International principles for protection of the children.

1. Constitutional basis

The Constitution of India safeguards the child's rights which are enshrined in the *Fundamental Rights (Part III)*; *Directive Principles of State Policy (Part IV)* and *Fundamental Duties (Part IV-A)*.

(i) FUNDAMENTAL RIGHTS (PART III)

Fundamental Rights relating to children are-

- ❖ *Prohibition of discrimination [Art. 15(3)]*³⁵- this article empowers the State to make any special provision for the children. This is an exception to the clause 1 of the same article which prohibit the discrimination among citizens.

³⁴ International Labour Organization Worst Form of Child Labour Convention, 1999.

³⁵ The Constitution of India, art. 15(3).

- ❖ *Right to life [Art. 21]*³⁶- it is states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” This provision has been liberally interpreted by the judiciary for the protection and welfare of the rights of the children in India. It has been discussed in the section of judicial activism.
- ❖ *Right to Education [Art. 21-A]*³⁷- this Article was inserted in Fundamental Rights by the Constitution (86th Amendment) Act, 2002. It is an obligation on the State to provide free and compulsory elementary education to all children between the age of 6 to 14 years. This is a very important provision for providing basic education to all children irrespective of their class, caste, gender etc., as the education is the foundation of the development of the responsible citizen.
- ❖ *Prohibition of traffic in human being and forced labour [Art. 23]*³⁸- this Article prohibit traffic in human beings and begar and other similar form of forced labour. Traffic in human being includes immoral traffic i.e., selling and buying of children for immoral purpose. These offences are punishable under law.
- ❖ *Prohibition of employment of children in factory, etc. [Art. 24]*³⁹ – the said Article prohibit the child below 14 years age to be employed in any factory, mine or prohibit the work in any hazardous employment like work in explosive making factory.
- ❖ *Protection of interests of minorities [Art. 29]*⁴⁰ – as per this provision of the Constitution, citizen of India (child) cannot be denied admission into any educational institution maintained by the State. Thus, it protects the right to education of the minority child also.
- ❖ *Right of minorities to establish and administer educational institutions [Art. 30]*⁴¹ – this provision allows the right of minorities (religious or linguistic) to established and administered educational institutions of their choice. It helps to eliminate the discrimination against such child who belong to different religion or have different language as their mother tongue than the majorities.

³⁶ *Id.*, art.21.

³⁷ *Id.*, art. 21-A.

³⁸ *Id.*, art. 23.

³⁹ *Id.*, art. 24.

⁴⁰ *Id.*, art. 29.

⁴¹ *Id.*, art. 30.

(ii) DIRECTIVE PRINCIPLES OF STATE POLICY (PART IV)

Although the Directive Principles of State Policy are not enforceable, they are guiding principles to the Government for the governance of the country. States have to implement these directives by enacting appropriate legislation. Part IV of the Constitution⁴² also contains some specific provisions for the protection of the children's rights.

- ❖ Art. 39 (e) and (f)- it states that “the States should direct its policy to secure that the tender age of children is not abused. Also, the policy should ensure that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and childhood is protected against exploitation, moral and material abandonment.”
- ❖ Art. 41- this Article is related to the right to education of the child. For securing this goal the State should make effective provisions within limits of its economic capacity and development.
- ❖ Art. 44- this Article is related to the uniform civil code throughout India. If uniform civil code implemented, it would bring uniformity in personal matters like adoption and guardianship of children.
- ❖ Art. 45- according to this Article the State should provide childhood care and education to the children until the age of 6 years. It protects the nursery level education of every child.
- ❖ Art. 46 – it directs the State to promote the educational interest of children belonging to the weaker sections of the society, particularly, of the Scheduled Caste and Scheduled Tribes.
- ❖ Art. 47 - provides that state should raise the level of nutrition and standard of living of its people and improve public health as among its primary duties.

⁴² The Constitution of India.

(iii) FUNDAMENTAL DUTIES (PART IV-A)

Originally there was no specific provision relating to children. However, with the 86th Amendment of the Constitution in 2002⁴³, it became duty of every parent and guardian to provide opportunities for education to his child or ward who is between the age of 6 and 14 years. [Art. 51A (k)].

These Constitutional provisions are very effective to protect the rights of children but prime requirement is to be implemented properly by enacting suitable laws for it. So, on the basis of these Constitutional provisions and international guidelines (specially, Convention on the rights of the child, 1992- ratified by the Indian Government) the Government has been enacted specific legislation for the children welfare.

2. Legislative framework

Target specific legislations are crucial for inclusive and holistic growth of every child. So, role of the Government become vital here to enact the laws or policies for the protection of child rights. In keeping with children special status, number of special legislations enacted by the Government. Some of these are mentioned here as-

- ❖ *The Child Labour (Prohibition and Regulation) Act, 1986 and Amendment Act, 2016*⁴⁴- to implement Art. 39 of the Constitution, the government enacted this Act. The objective of the Act, 1986 was to prohibit the employment of children in certain occupations set forth in Part A and B of the Schedule like transport of passenger, goods or mail by railway, Beedi-making, Tanning, Foundries etc., and regulate the condition of work of children in certain other employment.

In 2016, above Act was amended as *the Child Labour (Prohibition and Regulation) Amendment Act, 2016*. This Act prohibits the employment of children in all occupations, so that the overall development of children could become possible without any excuse remaining for the exploiters and completely abolish child labour from India.

⁴³ *Id.*, art. 51 A (k).

⁴⁴ *Supra* note 21 at 111.

- ❖ *The Infant Milk Substitutes, Feeding Bottles and Infant Foods Regulation of Production, Supply and Distribution Act, 1992*⁴⁵- to fulfill directions given under Art. 47 and the UNCRC commitments, this Act was enacted. Aimed to promote breast feeding of newborn children and infants. It ensures that infant foods are regulated and used appropriately.
- ❖ *The Juvenile Justice (Care and Protection of Children) Act, 2000 and Amendment Act, 2006*⁴⁶- Parliament has enacted this law on the basis of guidelines given under Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 and the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990). An object of this Act is to provides child-friendly juvenile Justice System while adjudicating criminal matter related to the juvenile in conflict with the law and in need of care and protection. This system is work by keeping in view development needs of children and for their rehabilitation and in their best interest. The Amendment to the Act forms the legal system and framework for the care, protection, treatment and rehabilitation of children.
- ❖ *The Commission for Protection of Child Rights Act, 2005* - under this Act, the National Commission for Protection of Child Rights was set up in 2007. The Commission is to ensure that ‘all laws, policies, programmes and administrative mechanisms are in compliance with the child rights provided under Constitution of India and the UN Convention on the Rights of the Child.’
- ❖ *The Right of Children to Free and Compulsory Education Act, 2009* - this Act enacted to fulfil the legal obligation casts on the government by Art. 21A i.e., to implement the fundamental right to education of children. This Act provides free and compulsory education to all the children between age group of 6 and 14 years and responsibility of admission, attendance and completion of education by all children belong to this group is on the Government.

⁴⁵ The Infant Milk Substitutes, Feeding Bottles and Infant Foods Regulation of Production, Supply and Distribution Act, 1992 (Act 41 of 1992).

⁴⁶ *Supra* note 27 at 2.

❖ *The Protection of Children from Sexual Offences Act, 2012* - it covers every known form of sexual abuse against children as punishable offence. It provides the process to assist child in overcoming their trauma and suffering and curb the offender by punishing them. Despite above all international efforts, Constitutional provisions and legislative enactments for the protection of child rights but abuse of child, child neglect, child marriage, trafficking in children, child labour and other form of child exploitation are reported in India. Judiciary as the final interpreter of the Constitution and guardian of the fundamental rights of the citizens of India including children come forward to protect their rights.

V. JUDICIAL ACTIVISM AND CHILDREN RIGHTS

The Judiciary has given a wide and meaningful interpretation to the rights of children enshrined in the Constitution. In some cases, it laid down guidelines to protect the economic and social rights of child labours, even interpret the provisions of the Statutes for the protection of child from exploitation and also incorporate many rights of children under Art. 21.

The judiciary play its role as a guardian to safeguard the children rights ranging from right to education, rights of children of prostitutes, child labour prohibition, juvenile justice in conflict of law, prohibition of trafficking and sexual abuse in children, right to nutrition, early child care etc. deserve to be credited.

Child welfare- the Supreme Court laid down principles as a solution till proper legislation enacted by the legislature in concern area to ensure welfare of children.

In *Lakshmi Kant Pandey v. Union of India*,⁴⁷ a writ petition was filed about social organization and voluntary agencies indulged in malpractices of offering Indian children in adoption to foreign parents. In this process, Indian children were exposed to long dreadful journey to foreign land and they were not provided any shelter or home and ultimately, they become beggars or prostitutes.

Bhagwati, J., laid down principles and norms to determine adoption of child by foreign parents. His Lordship ‘directed the Government and agencies to follow these principles in dealing with

⁴⁷ (1984) 2 SCC 244; (1987) 1 SCC 667

such cases as it is their constitutional obligation under Arts. 15(3) and 39(c) and (f) to ensure the welfare of the child.’

In *Vishal Jeet v. Union of India*,⁴⁸ the Supreme Court issued stringent direction to prevent flesh trade and sexual exploitation of children. The Court held that the objectives of Art. 39 of the Constitution to safeguard the interest and welfare of children have not been achieved in spite of enactment of various strict legislations.

In *Gaurav Jain v. Union of India*,⁴⁹ PIL was file to seek appropriate direction to Government for overcome the plight of prostitutes and their children. The Supreme Court has issued directions to Government and social organisations to rehabilitate the children of prostitutes through appropriate measures so that they will live with dignity in the society. The Court directed that the rescue child prostitutes and children should be kept under Department of Women and Child Development which will formulate proper scheme for effective implementation of these directions. Also, the Court directed the Ministry of Welfare for the establishment of Juvenile Home for such children.

In *R. D. Upadhayay v. State of Andhra Pradesh*,⁵⁰ a writ petition was filed by NGO ‘the Women Action Research and Legal Action for Women’ seeking the direction from court for proper care, welfare and development of children who are living in jails with their prisoner mother in worst condition. The Supreme Court issued detailed directions for the interest of such child regarding food, clothing, shelter, medical care, education and recreation facilities which are basic child rights declared under Constitution and various international instruments. The Court direct that the jail has provide pre- and post- natal care for mother and child. Birth of child in prison must be registered in the local birth registration office and Birth Certificate should not record the ‘prison’ as a birth place of such child. The Court also restrict the living of child above 6 -year age with prisoner mother.

Interpretation of Article 21 for welfare of children-

The court incorporate various rights in Article 21 which related to right to life and personal liberty.

⁴⁸ (1991) 1 SCC 283

⁴⁹ AIR 1997 SC 3021

⁵⁰ AIR 2006 SC 1946

Right to education-

Education is one of the essential elements in the civilized society to live dignified life. The framers of the Constitution imposed a duty on State under Art. 45 (DPSP) to provide free and compulsory education to all children until their 14 years of age. But the judiciary took an initiative to introduce the right to education under fundamental right under Art. 21 which is enforceable.

In *Mohini Jain v. State of Karnataka*,⁵¹ the Supreme Court broadly interprets Art. 21 of the Constitution. The petitioner Mohini Jain of Meerut was denied admission in private medical college in Karnataka on the ground that she was unable to pay tuition fee of Rs.60,000 per annum, which was charge (capitation fee) higher than the students belong to Karnataka.

In this case Supreme court held that ‘*the right to education* is a fundamental right under Art. 21 which cannot be denied to a citizen by charging higher fee. The right to education directly flows from right to life. The dignity of an individual cannot be assured without right to education.’ However, the Court did not explain about the age limit to ensure guaranteed right to education to the citizens.

In *Unnikrishnan v. State of A. P.*,⁵² the Supreme Court held that right to education restricted up to the age of 6 to 14 years child as a fundamental right. This was adopted in Art. 21A and then culminate into the legislation of the Right to Education Act, 2009.

The Supreme Court gave expanded interpretation to the right to live with dignity under Art. 21 in *Bandhua Mukti Morcha v. Union of India*,⁵³. The Court held that ‘Art. 21 includes protection of health and strength of workers and of the tender age of the children against abuse and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, and educational facilities. These are the minimum condition for a person to live with dignity.’

In *Swapan Kumar Saha v. South Point Montessori High School*,⁵⁴ the Gauhati High Court has held that overloading of school bus is violation of the children’s right to travel in school buses

⁵¹ AIR 1992 SC 1858

⁵² (1993) 1 SCC 645

⁵³ AIR 1984 SC 802

⁵⁴ AIR 2008 (NOC) 236 (Gau.)

safely include under Art. 21 i.e., right to life. The Court issued directions to school management to follow provisions of Motor Vehicles Act as they are under obligation to safe journey to the school children.

Juvenile Justice-

In *Sheela Barse v. Union of India*⁵⁵, the Supreme Court has directed to release all children under 16 years age from jails. The Court held that children should not be kept in jail as they are national asset, it is duty of the State to ensure fullest development of children's personality. The Court directed the State to set up remand home and juvenile courts and if not possible then release them.

In *Munna v. State of U. P.*,⁵⁶ a PIL was filed about sexual exploitation of children by criminals in Kanpur jail. Upon report of the District Judge of Kanpur, the Supreme Court directed the release of the children from jail and shift them to children's home.

In *Saheli v. Commissioner of Police*,⁵⁷ the Supreme Court directed the Delhi Administration to pay Rs. 75,000 /- as compensation to mother of a nine-year child who died because of police officer's beating.

Child Labour-

In *People's Union for Democratic Rights v. Union of India*,⁵⁸ (*Asiad Project*) the Supreme Court held that 'the construction work is hazardous employment and Art. 24 prohibit children below 14-year age to work in hazardous employment. Therefore, child below 14-year age can be employed in the construction work even though construction industry is not specified in the restricted list schedule to the Employment of Children Act, 1938. The Court advised the Government to immediately include the construction work in the schedule to the Act.

This judgement is in the interest of health and safety of life of children.

⁵⁵ AIR 1986 SC 1773

⁵⁶ (1982) 1 SCC 545

⁵⁷ AIR 1990 SC 513

⁵⁸ AIR 1983 SC 1473

In *Salal Hydro Project v. State of Jammu and Kashmir*,⁵⁹ the Supreme Court has reiterated the principle laid down in the *Asiad* case that the construction work is hazardous employment and violate Art. 24 of the Constitution. Therefore, children below 14 -year age cannot be employed in such work. It shows the apathy of government to include the construction work under prohibited schedule to the Employment of Children Act. However, judiciary plays its constitutional role to safeguard the rights of children continuously. For that they advise the Government and also laid down principles and guidelines.

In *M. C. Mehta v. State of Tamil Nadu*,⁶⁰ the Supreme Court has held that the children cannot be employed in the manufacturing process in match factory as it is a hazardous work under the Employment of Children Act, 1938. However, such children can be employed in packing process which should be in safe place. The Court direct that every employer make insurance of Rs. 5,000/- for every child and premium to be paid by the employer itself for employing the children in such work. In this case Court secure the life of the poor children who need to work for survival.

In *M. C. Mehta v. State of Tamil Nadu*,⁶¹ (*Child Labour Abolition Case*) PIL was filed by M. C. Mehta requested the Court to issue direction to the Government to abolish child labour. The case was about the worst condition of the children working in the Sivakasi Cracker Factories and violation of Art. 24 of the Constitution.

The Supreme Court issued elaborate guidelines for total prohibition of child labour. The Court directed to set up 'Child Labour Rehabilitation Welfare Fund' in which offending employer should deposit Rs. 20,000/-. The Court asked the Government to ensure that an adult member of such child should be given employment in place of the child. The Court direct that if the child is employed against the Act, then the punishment should be invoked against such person. This verdict gives a new ray of hope to the children specially whose fundamental rights enshrined in Arts. 24, 39 (e) and (f), 41, 45 and 47 get violated due to inaction of the Government.

⁵⁹ AIR 1984 SC 177

⁶⁰ AIR 1991 SC 417

⁶¹ AIR 1997 SC 699

In *Bandhua Mukti Morcha v. Union of India*,⁶² the Supreme Court has given direction to Government to ensure education, health and nutrition of child labours. The Court held that primary education to children, particular to the children from weaker sections, Dalits, tribal and minorities is mandatory. Basic education and employment oriented vocational education should be imparted to them.

In *Bachpan Bachao Andolan v. Union of India*,⁶³ a PIL was filed in the Supreme Court highlighted the serious condition, abuse and violations of children's basic needs like food, water, sanitation sleeping time etc., who are forcefully detained in circus. The Supreme Court issued direction that the Central Government must issue notifications for prohibition of employment of children in circus and it is necessary for the implementation of fundamental right to education enshrined in Art. 21A. the Court also direct the Government to kept the rescued children in the Care and Protective Homes till they attain 18 years of age.

Many such directions, guidelines, advice to the Government and relevant social organisations and landmark verdict given by the judiciary from time to time on filing PIL or Suo moto for the protection of rights of the most vulnerable section of the society but the most precious asset of the nation like India i.e., Indian Children. The judiciary still zealously working on to achieve the Constitutional mandates and principles laid down and which are ratified by India to protect the rights of child in India.

VI. CONCLUSION

Protection of rights of children against violation is primary responsibility of the Government. Despite having enacted various legislations, the children are still not protected in India. Effect of Child abuse and exploitation on child are serious and stunted the potential development of many children. The judiciary has issued the directives in many judgements like prohibition of child labour; promotion of child education which led into the amendment to the Constitution and it became a fundamental right now; providing juvenile justice etc.

⁶² (1997) 10 SCC 549

⁶³ AIR 2011 SC 3361

The Government should fulfil its Constitutional obligations of enacting and implementing appropriate legislations and formulate modern child development plan for protection of children's rights and make them dynamic citizens of the country. There is the need of special care and understanding of children's issues to prevent their exploitation and abuse. Judiciary done its part very well and still doing in right direction, only need is political will and awareness among people about the rights and privilege of the children. As our future is depend on their bright, heathy and happy present and on their inclusive (physical, mental, cultural and social) development and growth.