

ANALYSIS OF CHILD-CENTRIC LEGISLATION IN INDIA: SPECIAL REFERENCE TO JUDICIAL OVERVIEW

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Abstract

The protection to the rights of the children has been derived from the concept of human rights. The need of the protection of child rights has been taken into consideration post World War. India being a signatory has legislated laws to keep liaison with the CRC to protect the interests of the child. There are prevalence of several special child rights and procedural legislation in developing mechanism to protect the interests of the child. The special laws are enforced to take cognizance of discriminatory and abusive practice which derogates the integrity and dignity of the child. The Judiciary play a pivotal role in considering the position of the children involved in any practice in violation of their rights or dispute. The rights violation of the children in the community is primarily tackled by the state mechanism followed by which the justifiability of the rights can be reached only through judicial intervention. The present paper would discuss the landmark view of the judiciary at each level in protecting the rights and safeguarding the interests of the vulnerable groups of children guaranteed under special legislation.

Keyword: Child Rights, Justifiability, Discrimination, Judiciary, Records

Background of the Study

The rights protection of the children came into evolvment after the breakout of First World War. The condition of the children was marginalized due to lack of nutrition, protection, education, hygiene, etc. The distress condition of the child across the world led to the adoption of the Declaration by the League of Nation in 1924. The status of the children in the medieval period was not protected due to varied opinion of the community where the children were often considered as “small adults” and subject to contribute in the economic system. The children above the age of seven years were severely exposed to labour work and were pushed to take care of the family. The concern for the child rights protection came into subject prominently after the Second World War through the establishment of the United Nations. The prime objective behind the establishment of UN is to ensure international peace and security. The foremost application of the objectives of UN can be achieved through the protection of human rights. In 1948, the General Assembly of the UN adopted the Universal Declaration of Human Rights. The rights of the children been derived from the human rights which were needed to be separately protected due to various notion of discriminatory practices enrolled in the society to jeopardise the status and recognition of the children. The Declaration of the Rights of the Child were adopted by the General Assembly in 1959 which were not ratified by most member nations and subsequently tends to uplift the standard of living of children across the world through the Convention. In 1989 the Convention of the Rights of the Child (CRC) came into establishment which served as the principle guidelines to protect the rights of the children. The CRC has been signed and ratified after multiple discussions,

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suggestions, etc., been incorporated by the member countries. India became the signatory to CRC in 1992, legislates and amends the state legislation by keeping tie up with the CRC.

The major backbone of the protection of the Child rights has been propagated through the procedural law and establishment of the monitoring bodies solely responsible for the implementation of the child legislations in India. After 1992, two major steps has been taken by India likewise repealing the Juvenile Justice Act of 1986 by the Juvenile Justice (care and Protection of Children) Act 2000 and enforcing the Commission for the Protection of the Child Rights Act 2005. There were several category of the child been recognized within the provisions of the CRC, but till yet some of them has been recognized by India either through enacting special legislations or rendering protection through Act of 2000 or an Act of 2005. The major protection has been rendered through judicial interpretation which is sine qua non in protecting the rights of the children. The role of the Judiciary in upholding the objectives of the child legislations and to protect the children with adequate legal remedy alongside punishing the paedophile with adequate punishment is indispensable in child rights protection. Thus the discussion would be floated in covering the several aspects of the child legislation and would cover the major step taken by the Judiciary to protect the child rights.

Child-Centric Procedural Laws in India

Since independence, the laws concerning protection to the children across India has been evolved in diverse area of possible discrimination been practice against the integrity and dignity of the children. The Children Act 1960 came has been enforced to safeguard the interests of the children been neglected in the society and also came in conflict with law. The provisions in the Act of 1960 were discriminatory in terms of defining the child, as a boy under the age of sixteen and a girl below the age of eighteen years. The Act of 1960 also encompasses distinctive monitoring bodies that are Child Welfare Board to deal with the neglected children and Children's court to deal with the child committed violation of law. The Act of 1960 has been amended in 1978 in order to expand the scope of power of a litigator to represent before the children's court. The prevalence of separate legislation by the States marked the ambiguity in securing justice and child rights protection. Thus the lack of uniform treatment of the children was in contradiction towards attaining the objective of the legislation and contrary towards the interests of the children. In 1986, to incorporate uniform treatment across the country, the Juvenile justice Act came into enforcement repealing the prior legislations. There were some changes been implemented through the Act of 1986 are advisory boards, children's fund and provisions for monitoring the status of the child or juvenile. The Act of 1986 continued the discriminatory recognition of the child has been envisaged under the Act of 1960 and only dealt with the limited scope of both category of children been neglected and came in conflict with law. The major changes came into reflect after India became the signatory to the CRC in 1992 and repealed the Act of 1986 by the Act of 2000. Some major changes has been brought through the Act of 2000, likewise substituting the term "Child" with "Juvenile", establishment of Juvenile Justice Board, and expanded the scope of the category of children covered that is "juveniles in conflict with law" and "child in need of care and protection", recruitment of special police officers, mandatory provision of bail to every juvenile delinquent

unless it is contrary with the justice system or in pursuance to any danger. Further some relative form of uniformity are been implemented through the enactment of Act of 2000. But there was an urgent need in the repealing of the Act of 2000 in due recourse to the rate of crime been increased by the Juveniles aged between 16 to 18 years. The Juvenile Justice Act 2015 came into enforcement especially after the brutal incidence of Delhi Gang-rape case. The intrusion of some special provisions been incorporated through the Act of 2015 such as heinous crime juvenile aged between 16 to 18 years may be decided by JJB to be trailed before adult courts, evaluation of reports of the CWC periodically by the District Magistrate, uniform and smooth adoption mechanism, etc.

The Commission for Protection of Child Rights Act 2005 has been enforced to establish the monitoring bodies at the national and state level to be responsible for the implementation of child legislations enforced by the State and to ensure the protection and safeguarding the interests of child irrespective of any form of discrimination. The commission established has been delegated with powers and functions to take stringent action against any anti-social activities prevalent towards child victimization. The legislative piece of 2005 also provides the power to every Session Court of district to try the matters relating to the vulnerability or rights violation of any children.

Child-Rights Legislation in India

In surveillance to the protection of child rights, various vulnerable groups of children have been identified and subsequent special legislations have been brought in lieu of Article 15(3) of the Constitution of India. There are several provisions been envisaged under the Constitution of India towards uplifting the status of the child are compulsory right to education up to the age of fourteen years, prohibition of child labour, ensure health and overall development and protection from abusive or degrading environment, etc. The effort of legislation in exercising function under Article 15(3) legislation been introduced and enforced to secure the rights of the children of various vulnerable groups of the society been laid hereunder:

- a) **Child Labour-** The primary form of vulnerable group of children been identified as child labour. The traditional approach to expose the child to labour work at an early stage has been prohibited through the enforcement of The Child Labour (Prohibition and Regulation) Act, 1986. The practice of child labour has been prohibited where any child below the age of fourteen is engaged in any employment or establishment. The Act of 1986 has established the advisory committee to advise the Union Government regarding the inclusion of varied occupation to be exempt from employing any child has attained fourteen years or more age. The category of adolescents has been included in the Amendment Act of 2016 to protect the adolescents from employing in any hazardous work.
- b) **Child Trafficking-** The vulnerable group of children exposed to exploitation in the form of prostitution and children are subject to commercial use. The trafficking of human beings including child has been prohibited and punished under The Immoral Traffic (Prevention) Act, 1956. The person not yet attained the age of 18 years has been classified into two i.e. “child” as any person not yet attained the age of sixteen years and “minor” as any

individual who has already attained sixteen years but not yet attained the age of eighteen years. The Act of 1956 emphasized upon harder form of punishment in terms of involving any individual less than eighteen years or sixteen years. Thus the protection has been given through recruitment of special officers to be deal with the offences under the legislation piece of 1956.

- c) **Child Marriage-** The child in early and forced marriage has been a traditional practice since long ages. It is pertinent to consider that the voice against the practice of child marriage is nurtured since pre-independence period. In 1929, the Child Marriage Restraint Act has been enforced to restrict the solemnization of child marriage which has undergone several amendments in terms of determining the legal age as 14 years for female and 18 years for male to undergo marriage. In 2006, the Prohibition of Child Marriage Act came into effect by repealing the earlier legislation and enumerates effective provision to prohibit the solemnization of child marriage through establishment of Child Marriage Prohibition Officer (CMPO). The Act of 2006 has marked the age for undergoing marriage as 18 years for girls against 21 years for boys. The criticism been still prevalent in the existing legislation lies in declaring the child marriage to be voidable at the option of the minor contracting parties within two years counting from attainment of majority. Some remarkable development has been persuaded at the level of Karnataka State Government by declaring “all child marriage to be void-ab-initio” in the form of amending the State PCM Act. The same path has been followed by the Haryana State Government by introducing the Bill before the floors of State legislative assembly to declare child marriages as void-ab-initio, and recently been enforced as an Act which uplift the status of the children especially girls from getting into the trap of immature and illegal marriage. Recently the PCM (Amendment) bill of 2021 has been introduced in Lok Sabha to eradicate the age discrimination for between sexes and also to declare any form of child marriage would be null and void in the eyes of law.
- d) **Educational Rights of Children-** Another vulnerable category of children being deprived of compulsory education is a threat to the entire nation. In 2002, the Constitution of India has been amended to insert a fundamental right under Part III, in order to ensure the full-fledged exercise of right to education up to 14 years by every child without any forms of discrimination. The effective implementation of the Amendment Act of 2002 has been shaped on or after 2009 after the enforcement of Right to Free and Compulsory Education Act 2009. The intention and objective of the Act of 2009 is to provide up to the stage of elementary education i.e. eighth standard. The implementation of the Act of 2009 has a collaborative effect in protecting the fundamental right ensured under Article 21A of the Constitution of India.
- e) **Sexual Offences against Children-** In tie up with the discriminatory practices prevalent in the community against the integrity and dignity of the children, the most vulnerability factor lies with the children exposed to sexual offences. The enforcement of the Protection of Children from Sexual Offences Act 2012 keeps in conformity with the provisions of the

CRC in terms of protecting the children from sexual exploitation. The vulnerable group of children identified under the Act of 2012 can be tried before the special courts established under the Act of 2005 or can be tried before the Court of Session for disseminating any obscene material involving children. The Act of 2012 takes care of the overall health care and mental development by providing medical treatment, rehabilitation, psychological grooming, etc. and accordingly the procedural codes before the Session court to be held in considering the better interest of the minor victim and the maximum period to conclude any trial fixed under POCSO should not exceed the period of one year.. There are some degree of offence been explicitly defined by the root legislation are any form of sexual penetration committed by paedophiles, sexual penetration committed by people of varied authorities of the State, sexual assault and harassment, exploitation of children for pornographic use, etc. been committed to which are being accompanied with the harder form of punishment been introduced by The Protection of Children from Sexual Offences (Amendment) Act, 2019. The Act of 2012 further provides a space of Juvenile Justice Act if any crime under POCSO is being committed by any child, and accordingly the age factor would be decided by the Special Court with sufficient evidence.

- f) **Child Adoption-** The law has been established to cover the legal status of the children been eligible for adoption. Preliminary the adoption of the child are been regulated under the Hindu Adoption and Maintenance Act 1956 concerning the jurisdiction of personal laws. With the development of laws of the land, the adoption of any children irrespective of any class, category, religion, etc., is being governed under the Juvenile Justice Act 2015. The Act of 2015 also confers with the establishment of the agency i.e. Central Adoption Resource Authority (CARA) to ensure the implementation and regulation of inter-country adoption. Thus, the children who are in need of care and protection can be taken in adoption after due inquiry been made by the Committee to declare about the status of the children is devoid of any parent or ostensible support and thus fit for adoption and in continuance of need and protection.
- g) **Children of Prisoners-** The most overlooked form of vulnerable section of children are that of the children of incarcerated parents. The status of the children of prison inmates are covered under the legislative piece of 2005 while delegating powers to the commission established for protecting all category of vulnerable groups of children but not been recognized under the scope and ambit of the Juvenile Justice Act. The mere protection been provided to the children of prison inmates through the judicial intervention i.e. in the case of *R.D. Upadhyay v. State of Andhra Pradesh* whereby the guidelines has been served to uplift the living standard and considering the interest of the children accompanying parents inside the prison. It is pertinent to mention that the status of the children of prisoners is readily covered by the CRC, but adequate mechanism is still not in operation and resulting in compromise the childhood and mass violation of child right. Whereas mere protection has been given to the children accompanying their mother prisoners inside the prison are facilitated through the mechanism build under the Act of 2015.

There are various categories of the vulnerable groups of the child has been discussed above and highlighting the efforts of the legislature in enacting special legislation targeting the several vulnerable groups of children in the society. The main intention of the child-centric legislation is to cover the status under the roof of legislature and to protect them from any discriminatory or abusive practices meant to degrade the integrity and dignity of the children.

Judicial Intervention towards Child Rights Protection

The Judiciary has played a pivotal role in the protection of child rights and in carrying forward the intention of the child-rights legislation. The rationale behind the child-right legislation is tied with the justice delivery system through eradication and prohibition of all forms of discriminatory practices against the children. The role of the judiciary in protecting the rights of the children has been analysed through the discussion of various case laws involving children of different vulnerable groups of the society. The judicial intervention in securing the rights of the child from the discriminatory practice of child labour has been decided in many cases keeping in consideration the facts and circumstances of the disputes and taking the interests of the children in priority.

- In the case of Bandhua Mukti Morcha, the Writ petition been filed to highlight the miserable conditions of the workers due to inadequate living and hygienic standards of life. The Supreme Court stated to prohibit the engagement of child into any form of labour and also protect every children from any exploitation and discrimination. Thus the direction rendered by the Apex Court ban the prevalence of “bonded labour” and to protect the human beings including children from being part of social injustice.
- The case of Peoples Union for Democratic Right, the Supreme Court held the true prevalence of Article 24 along with the principle of International Labour Organization stating the complete restriction upon employing of the children less than 14 years of age in any construction activity.
- A major observation and guidance been delivered by the Apex Court in the case M.C. Mehta in regard to abolish the practice of child labour. The guidelines gave emphasis to impose compensation to every employer to be ensured by the inspector a sum of Rs. 20000/- for employing any child and in contrary to the Constitutional provision. The compensation amount to be deposited with the fund referred as “Child Labour Rehabilitation-cum-Welfare Fund”.

The action of the judiciary in safeguarding the childhood of endangered groups of children covered to the practice of human trafficking for the purpose of profiteering and prostitution. The contention of the judiciary would be reflected through various cases like:

- The Supreme Court laid down stringent guidelines and appropriate action to prohibit the practice of trafficking in the case of Vishal Jeet in 1990. The Apex Court emphasized upon the protection and securing the children from the grasp of trafficking in the form of prostitution or been rescued from the brothel house. The direction been guided to the respective governments in lieu of taking appropriate action vide enforcing agencies to tackle the threat of child trafficking and separate Advisory Committee needs to be set up to deal with the rehabilitation process of the youngsters been rescued from the mouth of

child prostitution and to employ qualified trainers to contribute towards the best interests of the rescued children. The direction also been suggested surrounding the implementation of varied welfare programs to deal with the children exposed to trafficking for illicit purpose. There shall be active participation of the Union Government to introduce several schemes and programs for the better protection and development of the children from getting sexual exploited at the cost of trafficking.

- A notable decision has been taken by the Apex Court in the case of *Gaurav Jain v. Union of India*, to ensure the protection and development of the women and children subject to victimization of trafficking. The order has been issued by the Apex Court directing the Union Government to constitute a Committee in order to pursue a depth study of the problems been faced in the Rehabilitation of the trafficked beings. The major role of the established Committee would be to frame the “National Plan of Action” and introduce various schemes for the swift sailing of the rehabilitation process of the trafficked women and also to uplift the status of their children in terms of equality and dignified life.
- In the year 2006, the High Court of Delhi has observed in the case of *Kamaljit*, that the objective of the Action Plan of 1998 has not been achieved which results in the disguise instances of trafficking of the women and children for the purpose of prostitution. The Court also stated that the enforced penal statutes must deal and restrict the practice of trafficking especially of women and children. The Court also emphasized about the ratification of India to the “UN Convention Against Trans-National Organized Crime” in 2002, and beside being a signatory the member States are obligated to tackle and combat the Trafficking and punish the offenders in accordance with the law of the land.

The child marriage being a prevalent discriminatory practice in the society and the Judiciary has provided varied justification in upholding the validity or nullifying the child marriage.

- In the year 2012, the High Court of Delhi reiterated the prevalence of the personal law over the statutory law. The High Court in the case of *Mrs. Tahra Begum*, upheld the marriage of Muslim girl post-attainment of puberty i.e. 15 years of age, and stated the liberty to commence without the consent of the family and also permissible to repudiate the marriage.
- While in the same year, the Karnataka high Court took a contrary view in the case of *Ms. Seema Begum*. The High Court nullify the marriage been commenced where one of the contracting party is a Muslim girl aged around 16 years of age. The declaration been sought in the petition that the marriage has been governed in accordance with the personal law. The Court stated that the personal law cannot prevail over the statutory provisions, and thus the marriage is void in accordance with the provision of legal age of a girl child i.e. 18 years to enter into marriage under the Prohibition of Child Marriage Act 2006. The contention of the High Court has been reproduced hereunder:

“...no Indian citizen on the ground of his belonging to a particular religion, can claim immunity from the application of the P.C.M”
- In 2010, the Karnataka High Court took an affirmative action in the case of *Muthamma Devaya*, to constitute a Core Committee to extent the practice of the child marriage and to

recommend the solution to such social issue. Thus the petition has been disposed in accordance with the consultation of the core committee. Thereafter the detailed study been pursued by the Core Committee which led in introducing and further enacting the Karnataka Prohibition of Child Marriage (Amendment) Act 2016 emphasizing every child marriage to be void-ab-initio.

- In 2013 a Writ Petition has been filed by the National Human Rights Organization Independent thought, challenging the constitutional validity of Exception 2 of Section 375 of Indian Penal Code. The Supreme Court after the long battle of 4 years or more passed a harmonious constructive judgment. The judgment substitute the word “fifteen years” with “eighteen years” remarked in the sub clause 2 of Exception Clause of Section 375. The above view of the Supreme Court has triggered down the loophole to commence legal child marriage. But no amendment has been till date came into force following the judgment of Independent Thought.
- In the case of Aisha Kumari, the Petitioner has sought the help of Judiciary to repudiate her marriage been commenced while she was a minor. The petitioner has been forced to retrieve her marriage by her spouse and in-laws and tried to relocate her in the state of Gujarat. The Petitioner has taken the shelter of the amendment enforced by the State government of Karnataka by inserting sub-section 1A in Section 3 to Karnataka Prohibition of Child Marriage Amendment Act 2016 reproduced hereunder:

“(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio”

The Petitioner further relied on the distinctive judgment been passed by the Supreme Court in the case of Independent Thought. The High Court of Delhi also sought a reply from the Central Government towards invalidating any form of child marriage. Thus, the landmark view has been taken by the central government in terms of introducing an amendment to the existing Prohibition of Child Marriage Act 2006 before the floors of Lok Sabha in 2021 taking remarkable action like declaring any form of child marriage as “void ab initio” and removing the age discrimination and sought for attainment of uniform age i.e. 21 years for both male and female to commence legal marriage.

The children of the society are been subjected to sexual offence at various instance despite the enforcement and implementation of the penal laws through monitoring bodies established under the special legislation.

- The case of Tuka Ram, shaken the premise of justice delivery system, where a 16 year old girl has been raped by the officials of the police station. During the trial stage, it has been found that the medical report clearly stating that the intercourse has been pursued with the consent of the Complainant as there is no mark been found usually appeared while resisting for intercourse. The Session Court acquitted the accused, while the High Court set aside the judgment which later observed by the Supreme Court and held the judgment been

passed by the Session Court relying upon the evidentiary value been brought through the medical report.

- The Supreme Court has taken a contrary view in the case of Gurmit Singh, where a minor girl has been kidnapped and committed repeated rape by three of the accused. The Session Court after the conclusion of trial period acquitted the accused on the ground of delay in filing FIR, unable to describe the car through which the victim has been kidnapped, and for not alarming while the victim has been kidnapped and taken away by putting inside the car. The Apex court while adjudicating all the evidences and circumstances of the case upheld the conviction of the accused and set guidelines to hear the matter related to sexual offences at the trial court.
- The petition has been filed by a NGO before the Apex Court named “Sakshi” elaborating the menace growth of rape cases especially been committed against the children. The limited scope been illustrated under the provision of Section 375 defining “Rape” triggers the commission of sexual offences against children which is beyond the scope of “penile and vaginal penetration”. The Supreme Court taking in consonance with the petition urged the Parliament to adopt amendments in existing penal statutes reproducing hereinafter:

“The suggestions made by the petitioners will advance the cause of justice and are in the larger interest of society. The cases of child abuse and rape are increasing at an alarming speed and appropriate legislation in this regard is, therefore, urgently required. We hope and trust that the parliament will give serious attention to the points highlights by the petitioner and make appropriate legislation with all the promptness which it deserves.”

(Emphasis supplied)

The Apex Court further direct the law Commission to take the submission of the petitioner in consideration and to check upon the scope of Section 375 of IPC in regard to the protection and development of the children against the heinous crime of sexual offences.

- The Supreme Court in the case of Om Prakash, upheld the conviction of the accused who was charged for committing rape of a 8 year old girl and the mother of the victim was the sole eye-witness. During the trial period the accused was acquitted by the lower court only on the basis of the medical examination report of the victim, but later convicted by the Apex Court only based upon the testimony of the victim.
- In lieu of protecting the interest of minor victim of sexual offence, a PIL has been filed by the NGO working deliberately towards the protection of the human rights affected from trafficking, bonded labour, etc. in the State of Uttar Pradesh. The petition was filed to include Rules 7(4) of POSCO Rules 2012 under the scope and ambit of victim compensation fund been constituted under the provision of Section 357-A of Criminal Procedure Code, 1973. While the petition was pending adjudication before the Apex Court, the respondent filed the affidavit stating the grievance raised vide the petition has been notified already by the State government. The Apex Court had pin pointedly opined that the scope of Victim Compensation Fund was limited to some specific offences such as been

defined under section 4, 6, and 14 of the POCSO Act 2012. The notification has been issued in same regard to the state government to include the scope of other offences defined under section 7, 9 and 11 of the POCSO Act within the purview of Fund.

- The judgment delivered in the case Independent Thought helped in prevention of sexual offences committing against the minor child in the name of illegal child marriage. The Apex Court has sought an harmonious amendment to the challenging provision of Exception 2 of Section 375 of IPC and thereby read as produced hereunder;

“Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape”
- Recently in a case of sexual assault committed against a girl child, where the accused forcibly touches and insert finger into the vagina of the victim. The trial court upheld the conviction of the accused under section 8 of POCSO Act. When the matter filed as an appeal against the decision of trial court, the High Court of Calcutta stated that the mere penetration or the ground of medical examination could be a sufficient ground to corroborate the charge. The High Court clearly stated the scope of Section 8 is expanded even to touching sexual organs would be enough to punish the offender and therefore upheld the decision of lower court.

The adoption of the child is being in practice in order to secure the future of the child who are abandoned, orphan, etc., to get under the shelter of the family wilfully and intentionally adopts the child in due regard to the best interests of the child following legal norms and procedures. The Judiciary has a vital role in securing the interests of the adoptive child.

- The Judiciary has sought for the essential elements of adoption in the case of Balu Sakharam Powar. The High Court of Bombay states that prior adopting any child two elements needs to be borne in mind that is the right to adopt and the adoption extends to the inheritance upon the property.
- In the case of Lakshmi Kant Pandey, the petitioner contended that the practice of child taken in adoption abroad results in engaging the children in begging and prostitution. Thus, the Apex Court sought the suggestion from the Union Government, ICCW, and ICSW in order to propose for the procedural norms to be stringently followed in the adoption of the child by the foreign parents. Thus the guidelines been provided by the authoritative body protect the future and interests of many adoptive children taken in abroad.

The right to education is a constitutional and legal right been enshrined under the Constitution of India before the amendment act of 2002. Later onwards the compulsory educational rights become a fundamental right by insertion of Article 21A. Thus every child has the right to pursue free and compulsory elementary education up to the age of 14 years. The Judiciary holds a vital role in protecting the educational right of the children.

- In the case of Mohini Jain, the petitioner has challenged the validity of the notification been issued by the state government of Karnataka charging captivate fees by the private educational institutions. The Supreme Court held that the fundamental right to pursue

education at any stage of a citizen cannot be violated by charging captivated fees which is stringent violation of the Article 14 and is discriminatory, arbitrary and contrary with the provisions of the Constitution of India. The Supreme Court further stated that though the right to education does not included within Part III but envisaged under Part IV of the Constitution. The Fundamental rights and Directive principles are complimentary to each other and the right to education derives from the right to life which is being guaranteed under Article 21.

- In the preceding year, the petition was filed by the private educational institutions challenging the judgment delivered in the case of Mohini Jain. The Supreme partly agreed with the decisions of the Mohini Jain case in regard to derivation of right to education emancipate from the right to education. But the Apex Court overruled the other part of the earlier decision and stated that the free and compulsory education are to be implemented only up to the age of 14 years and beyond it would be subject to the condition precedent upon economic status of the state. Therefore the obligation enshrined under the directive principles would be furnished in establishing institutions by the State and by way of recognizing any affiliation to the private institutions.
- The Supreme Court in the case of Islamic Academy of Education held that the management body of the private educational institutions in order to frame rules and regulations in regard to fixing of fees structure and admissions of the students. The Apex Court stated that the educational right is a compulsory right to every human being and the educational institutions must keep an affordable economic structure to ensure the equal participation and development to education.

The overlooked category of child vulnerable group covers the status of children of prisoner of the society. The loophole in the legislation enriches the vulnerability to the identity of the children of inmates. The Judiciary owes a major role in safeguarding the interests of the children of prisoners accompanying their parents inside the prison.

- In the case of R.D. Upadhyay, the petition was filed concerning the status of the children accompanying their incarcerated mothers inside the prison. The Apex Court take in cognizance of the situation of the children of prison inmates referred to the suggestion been provided by the National Institute of Criminology and Forensic Sciences, where it reflects the degraded condition of the children living with their incarcerated mothers in terms of health, sanitation, hygiene, education, etc. The Supreme Court issue a direction to the States and Union Territories to envisage the status of the children of prisoners and thereby provided a detailed guidelines to be followed by the prison administration across the nation to uplift the status and protect the interest and development of the children of mother prisoners.
- The High Court of Allahabad also plays a vital role in the case of Bachchey Lal, where the NGO named PRAYAS was invited as amicus curiae to conduct a detailed research reports upon the condition prevailing in the prisons in the state of Uttar Pradesh. The recommendation made by the PRYAS has a deliberate concern towards improving the

condition of the children of prisoners by outlining the creation of Balwandi Space and crèche facilities; recruitment of female prison staff in order to meet the welfare and development of the women and child deployed in the female barracks and requirement of Liaison Officer to cater the needs of the dependents especially children of the prisoners living in the community during the incarceration period of their parents. It further emphasized about the inclusion of the status of children of prisoners in the Integrated Child Protection Scheme and the District Child Protection Unit must owe the responsibility to make periodic visit to the children living in the community i.e. either to house/ relative place or any child care institutions and inform the condition of such child to the parents detained inside the prison. Thus a circular must be issued at the end of the Director General of Police so that the police officials must take consideration to the welfare and development of the children placed outside and if any supervision is required then adequately the child would be placed with the mother prisoners if the age criteria fulfils or does not want to keep inside prison, or else would be looked after by the Child Welfare Committee. Every action taken about any children living outside the prison must be taken into record before the Court of law and adequately the District Child Protection Officer (DCPO) must be informed regarding the same.

Conclusions and Suggestions

The concern towards protecting the interests and rights of the children emancipate from the international instruments. The signatories to the UN Convention adopted towards the welfare and development of the children confers upon eradication of arbitrary and virulent practices which are enough to demise the dignity and integrity of the children. India being the member states has developed varied child-centric legislation with the passage of time to eradicate and prohibit the anti-social practices derogatory toward the interests of the children. The Legislative efforts limited to legislation-making and would be diluted towards the protection of victim and punishing the offender through interpretation of the existing law is solely upon the shoulder of the Judiciary. The Judiciary helps in safeguarding the rights of the children who were exposed to vulnerable practices and adequately processed through the justice delivery system to reach into decision. The role of Judiciary towards upholding the objective of the child legislations are indispensable and protect the minor victim from every possible threat or danger in the course of proceedings or post trial or judgement stage and also provide proper medical and counselling services to get rid from the trauma and unforgettable incident of rights violation.

The present study has covered the various child rights legislations rooted from the traditional or anti-social practices and its wide range of judicial overview in reaching out the objective of the legislation and protect the interests and rights of the minor victim. Thus, the study would lie over some suggestions which might be taken into cognizance towards the better development and welfare of the children vulnerable to the society:

- a) There should be strong prevalence of the special legislation made in lieu of Article 15(3) over any personal and statutory laws.

- b) The decision of the Judiciary sometime overreach the jurisdiction of the existing legislation to secure the rights and interests of the vulnerable groups like minor victims, and such needs to be taken into earliest consideration by the legislation.
- c) The Union Government must devote adequate budgetary allowances to meet the objectives of the child legislations keep liaison with the CRC.
- d) Apart from the efforts of the judiciary, the role of enforcement officials are sine-qua non in dealing with the crime in the society. Thus the enforcement officials must get exposed to proper training and learning programs to act diligently and carefully into various crimes committed against children or where a minor is involved.
- e) The procedural laws governing the era of protection of child rights in the light of justice delivery system must cover all vulnerable sections of the children under the scope and ambit of Juvenile Justice Act.
- f) All the state governments must keep uniform tie up with the Union government in establishing an effective mechanism towards reaching the objectivity of the procedural and special legislation.

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