

PART I
INTRODUCTORY

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CHAPTER I

INTRODUCTORY

BOTH AT the national level and the international level greater interest is being shown in the matter of welfare of children. Children need special protection because of their tender age, physique and mental faculties. They are a "supremely important national asset" and the future well-being of the nation depends as to how children grow and develop. They need special laws to protect them from exploitation and fraud, to save them from certain liabilities and to develop their personality in view of their weak position.

A survey of the statute book reveals that a few statutes relating to children were enacted during the pre-independence era, but the British had a general apathy towards the welfare of the people of India including children. After independence, however, the state has become fully conscious of its responsibility towards children. This consciousness is reflected in some of the constitutional provisions and a number of enactments passed for securing the well-being of children.

The provisions of the Constitution with special reference to children are : article 15(3) enables the state to make special provisions for women and children. Article 24 provides that "No child below the age of fourteen years shall be employed to work in any factory or mine or employed in any hazardous employment." Clauses (e) and (f) of article 39 provide that the state shall direct its policy towards securing "that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength" and that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood

and youth are protected against exploitation and against moral and material abandonment." Article 45 provides that "The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of fourteen years."

The survey of statutes reveal that there are over 250 central and state enactments on the subject. Apart from the laws specifically enacted for the welfare of children, laws had to be passed regulating the relationship of individuals with children keeping in view their tender years. A broad classification in which these enactments fall is : marriage, legitimacy, guardianship, maintenance, adoption, criminal law, reformatory services, probation, children homes, prohibition of smoking, suppression of immoral traffic, child welfare, prevention of vagrancy and beggary, tortious and contractual liability of children, transfer of property, labour welfare, education of children, child health and other miscellaneous matters.

In 1974 the Government of India adopted the National Policy for Children. The full text of the resolution appears in appendix I. It provides that "the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose reducing inequality and ensuring social justice." The resolution further states : "It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth."

The resolution constituted a National Children's Board. The Prime Minister is the president of the board, and the Secretary of the Government of India in the Department of Social Welfare is its secretary. The members of the board include the Minister of Education and Social Welfare, the Minister of Health and Family Planning, besides representatives of Parliament, state governments and social institutions. The functions of the board are to create an awareness about the need for child welfare and to focus attention on the needs of children, to plan and review different programmes and coordinate the multiplicity of services striving to meet the needs of children. Similar boards may be constituted at the state level.

An inaugural meeting of the National Children Board was held on September 15, 1975.

In 1959 the U.N. made Declaration of the Rights of the Child. The Declaration emphasises that the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth, and that mankind owes to the child the best it has to give. The Declaration mentions, *inter alia*, that the child shall enjoy special protection and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity; that he shall enjoy the benefits of social security; that a handicapped child shall be given special treatment, education and care required by his particular conditions; that a child of tender years shall not, save in exceptional circumstances, be separated from his mother; that the child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages; that the child shall be protected against all forms of neglect, cruelty and exploitation and that he shall not be subject of traffic in any form; and that he shall not be admitted to employment before an appropriate minimum age. The full text of the resolution appears in Appendix II.

Through a resolution in 1976, the United Nations declared the year 1979 to be the International Year of the Child. Its purpose is to encourage all countries to review their programmes for the promotion of the well-being of children and to mobilise support for national and local action programmes according to each country's conditions, needs and priorities. The text of the resolution is given in Appendix III.

Attention is also being paid at the international level for protection of children born out of wedlock and to avoid discriminatory treatment being accorded to them. It is well-known that illegitimate children do not enjoy the same legal and social protection as legitimate children. To eliminate this there is the U.N. Draft General Principles on Equality and Non-Discrimination in Respect of Persons Born out of Wedlock. These principles mention that a sizeable portion of the population of the world is composed of persons born out of wedlock, many of whom, because of the nature of their birth, are the victims of legal or social discrimination in violation of the principles of equality and non-discrimination set out in the Charter of the United Nations, the International Covenants on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Universal Declaration of Human Rights and the Declaration of the Rights of the Child. These principles provide, *inter alia*, that the establishment of paternal filiation shall be provided for by law through a variety of means, including acknowledgement, recognition

of legal presumptions and judicial decisions. That the husband shall be presumed to be the father of any child born to his wife if it is conceived or born during the marriage. That any person born of parents who marry each other after the birth of that person shall be considered to be born of that marriage. That every person born in wedlock shall retain his status notwithstanding the invalidity or annulment of the matrimonial link. That every person once his filiation has been established shall have the same legal status as a person born in wedlock. That every person born out of wedlock shall enjoy the same political, social, economic and cultural rights as persons born in wedlock, and the state shall render material and other assistance to children born out of wedlock.

In the matter of employment of children much activity has been going on at the level of International Labour Organisation. Several Conventions and Recommendations of the I.L.O. specifically deal with the protection of the child against exploitation in employment and provide for their well-being and lay down minimum age for different employments.

A survey of the Indian statutory provisions indicates that our legislators are conscious of the need to provide special protection to children. By and large the situation is satisfactory as far as the legislation is concerned, though there are deficiencies here and there. The first basic problem with all this legislation has been with regard to the fixation of the age of the child and different statutes prescribe different ages keeping in view the purposes of the statute concerned. The question of standardisation of the age of the child was examined by a Working Group appointed by the Government of India, Department of Social Welfare in 1974. It came to the conclusion "that it is not feasible to standardise the definition of the age of a child for application in all cases." It, however, felt that it may be possible to have uniformity of age in particular fields for certain specific purposes.

In the following pages the Indian statutory provisions relating to children have been analysed under different parts. The analysis is based on the statutory provisions with occasional references to the comparative position and international standards. The primary objective of the study had been to collect laws relating to children at one place and to reveal their deficiencies, if any, on the basis of analysis and study of the statutory provisions. No attempt has been made to make an empirical study of the actual operation of these laws.