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RESEARCH ARTICLE

VIOLATION OF CHILD RIGHTS: IN INDIAN PERSPECTIVE

*Dr. Anindita Choudhury

Assistant Professor, ICFAI Law School, ICFAI University, Sambalpur, Tripura, pin code-799210, India

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***Corresponding author:**

Dr. Anindita Choudhury

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ABSTRACT

The Word Child" means a human being of either gender especially one between infancy and youth. They are the most innocent and also loveliest creature of nature. A child today is a man tomorrow. They are the Country's future. Everywhere in the society the child is well taken care, because the Country's future lies on their healthy growth. Our mythology like Ramayana, Mahabharata, Vedas, etc also places the children in the throne of various Gods like Balgopal, Nandalal etc. As the children are innocent, tender in age, physically weaker, they cannot protect themselves. So, their rights need to be protected by the Society as well as law. Lacks of experiences, exposures, improper care/guidance are some of the contributing factors for their vulnerability and external influences. Children from ancient India till now are open to various heinous crimes, abuses, exploitation. And their basic human rights are usually vanished by different kinds of evil from their very tender age. They are becoming the subject of Socio-Political and economic exploitation leading to various crimes. Usually those exploited child becomes defenceless both physically and mentally. There is no dearth of laws for protecting the child's right. But inspite of presence of various laws, those children are usually abused both in their home and outside home. In this way the buds of the flower are obstructed to blossom further. Children even being the greatest hope and assets of our nation are the sufferer of various human rights violation. During the recent years unfortunately the vulnerability against children are on increase. Children are thus exploited and abused in several forms. As every human being is born free having their own dignity and rights, those rights must be provided to the full extent by the State and the Society.

Our Noble Laureate Rabindranath Tagore once expressed –
“Every Child brings with his birth, the message of God”

INTRODUCTION

Children are the greatest gift to the humanity. The children signify eternal optimism in the human being and always provide the potential for human development. If the children are better equipped with a broader human output, the society will develop in no time. Neglecting the children means loss to the society as a whole. If the children are deprived of their childhood socially, economically, physically and mentally, the nation will be deprived of the potential for social progress, economic empowerment and social stability. Due to immaturity children are subjected to many visible and invisible sufferings and disabilities-in particular health, intellectual, social degradation, poor economic conditions etc. Like such problems one of the most painful problems is there from which our children are suffering that is the problem of sexual abuse .It is a great stain in the face of justice. Those innocent fellows sometime accidentally become the victim of some morons in the face of human being in our society. Even children comprising of both boy and girl child can also be a victim of sexual abuse at different circumstances.

But our societies worldwide turned a cold shoulder towards the heinous offence of child sexual abuse in the country by analyzing through various dimensions. Now time and again the issues seek to examine the veracity of the situation of children, who are the victim irrespective of its innocence and fragility, and thus lose his voice in the dogmas of the society. It is for such societal barriers that the rights of children are not counted as a paramount importance in the civilized country like India. A child victim is often threatened by the pedophile against any disclosure. Hence the ambit of sexual abuse is traumatic not only on the psychological growth but also on the wellbeing of such a child¹. Especially the condition of girl child is beyond description in our society. In different Indian villages the birth of a girl child are treated as a curse. Even after birth she has to face various torture, harassment and abuses. In our mythology, Vedas etc the women were placed in the throne of *Devi* or *Shakti*. Our modern laws also allow their same status with men. But in reality they are usually victimized by different kind of evils from their very tender age. This is the failure of our social system.

¹ Christ University Law Journal, vol-2, No.1, January 2013

Thus Our Noble Laureate Rabindranath Tagore thus once expressed-

"We are miserably bankrupt in social, educational, spiritual and universal cognition"

Human society has witnessed substantial changes in the passage of time through democratic process. Even after observing 68 years of independence our innocent children are not protected by legislative, executive as well as judicial interference. In spite of presence of various laws, children are very usually abused in several forms. The rights of the children are being violated both at home and outside home. The children are like the bud of a flower. But if the child is abused at his very tender age, then that bud will never blossom into a flower. It will be smashed at its beginning itself.

Background of violation of child rights

Thus violation of child rights occurs at every socio economic level, crosses ethnic and cultural lines, and is present within all religions and all levels of education. There are multiple types of violation in the form of abuse like social, physical, emotional and sexual.

And the subject of child rights violation is still a taboo in India. Very often children do not even realize that they are being exploited. Some of the backgrounds of such crime are like:

- Ignorance of the society,
- Innocence led the children more vulnerable to crimes,
- Illiterate villagers never bother about the special rights of their children,
- Children belonging from lower social and economic status are more open to vulnerabilities,
- Gender discriminatory practices,
- Lack of parental control and care,
- Lack of awareness regarding the human rights of children and the presence of various children welfare laws.

Rights available to children

The nation's children are supremely important asset. Their nurture and solicitude are the responsibility of the State. Equal opportunities for the development of all children during the period of growth should be the primary aim, which will serve the larger purpose of reducing inequality and ensuring social justice. Thus to fulfill these aim the children are provided with some of their basic rights, which their family, State and Society are bound to provide, such as:

- Right to education
- Right to health
- Right to an adequate standard of living
- Right to be protected from abuse and harm.

Indian constitution and other Indian legislations to protect child rights

1. Indian Constitution: The founding father of the Indian Constitution, Dr. B.R Ambedkar was far a head in his wisdom which was projected in the directive principles, including the children as beneficiaries. The deprivation has deleterious effect

on the efficacy the democracy and the rule-of law. Children are the future of our country and they need special care and protection because of their age, physical and mental condition. And they also seriously need to be protected of the social curse like the abuses against the children. Thus our Constitution has conferred enabling powers on the Govt. –

- To make special provision for women and child,²
- To provide Free and compulsory education for all children of the age of 6 to 14 years;³
- To prohibit the traffic in human beings and forced labour.⁴
- Prohibition of employment of children in factories, etc. -No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment;⁵
- That the state shall, in particular, direct its policy towards securing:

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 occupations unsuited to their age or strength;⁶ etc

2. Indian Penal Code: Generally various provisions were put in force that criminalizes the offenders against women and children in our Indian penal code (IPC). Thus IPC deals with the particular crimes relating to women and child. It defines and punishes offences and offenders against children.

3. The Factories Act of 1948: The Act prohibits the employment of children below the age of 14 years in any factory. The law also placed rules on whom, when and how long can pre-adults aged 15–18 years be employed in any factory.

4. The Mines Act of 1952: The Act prohibits the employment of children below 18 years of age in a mine.

5. The Immoral Traffic (Prevention) Act, 1956 (ITPA): In 1986, the Government of India amended the erstwhile Suppression of Immoral Traffic in Women and Girls Act 1956 (SITA), and renamed it as the Immoral Traffic (Prevention) Act (ITPA) to widen the scope of the law to cover both the sexes exploited sexually for commercial purposes and to provide enhanced penalties for offences involving children and minors. "Child" under ITPA means a person who has not completed the age of sixteen years and the Act also clarifies that, a child or minor found in a brothel, on medical examination, detected to have been sexually abused, it shall be presumed, unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or, as the case may be, has been sexually exploited for commercial purposes; Thus this Act is also there dealing with the particular crime against children.

6. The Child Labour (Prohibition and Regulation) Act of 1986: Child labour is the practice of having children engage in economic activity, on part or -time basis. The practice deprives

² Article 15(3) Of the Indian Constitution

³ Article21A Of the Indian Constitution

⁴ Article23 Of the Indian Constitution

⁵ Article24 Of the Indian Constitution

⁶ Article39(e) Of the Indian Constitution

children of their childhood, and is harmful to their physical and mental development. Poverty, lack of good schools and growth of informal economy are considered as the important causes of child labour in India. The Act prohibits the employment of children below the age of 14 years in hazardous occupations identified in a list by the law.

7. The Juvenile Justice (Care and Protection) Act, 2000: Various legislatures dealing with the problem of child right violation are there, the Juvenile Justice Act, 1986 is one of them. It was enacted to provide care, treatment, protection and rehabilitation of neglected and delinquent children. In the year 2000, the Act widened its scope covering various other vulnerable sections of children. The present Act thus came into being as, the Juvenile Justice (Care and Protection of Children) Act, 2000. Earlier the Act of 1986 provided for the protection of two categories of children i.e., the neglected and delinquent children. But now the present Act of 2000 took a boarder view and came out with protectionary measures for the juveniles in conflict with law and "child is need of care and protection". Under these categories various types of children suffering from various abuses are included. **Section 2(k)**, mentions the age of 'Juvenile' or 'child' as a person who has not completed the age of 18 years.

8. The Child Rights Act, 2005, established the National Commission for the Protection of Child Rights and the State Commissions for the Protection of Child Rights are also serving towards the protection of children in a very fruitful manner applying various policies of their own.

National commission for the protection of child rights

The National Commission for the Protection of Child Rights was set up in March 2007, under the Commission for Protection of Child Rights act, 2005. The main objective of the establishment of the commission is to monitor and supervise all the plans, policies and programmes for the protection of the child rights, as enshrined in the constitution and other acts. The national commission observed that more and more children are vulnerable and marginalized today. A large number of children are trafficked, exploited and abused. It has also researched that the girl child are the more victims of cruel market forces, lack access to protective schemes, child marriages, and sexual exploitations both at home and outside home. Thus on several thematic issues, the commission has been intervening using several methodologies one of those issues is relating to the violation of rights of the child. The national commission also established a division linked with POCSO to examine and monitor the implementation of the act in April 2013. Some of the child jurisprudence as observed by the national commission is such that, children need special measures at every stage of the process of justice. These measures should be applied both for child victims and child witnesses. They commission also viewed that the children should remain protected and not victimized. NCPR for the sake of those unfortunate children has taken various measures. One of those measures is that it has made recommendations to the state govt for registration of FIR in the cases of missing children and child tracking system.

The national commission also functions for protecting the children from sexual offences by –

- Examining and reviewing the application of laws available against abuses of children.
- Inquiring into violation of child rights.
- Examining all factors leading to trafficking of children, maltreatment, torture, sexual abuses, child prostitution, etc.
- Recommending appropriate remedial measures to the victim girls and her families,
- Spreading awareness relating to the child rights.

State commission for the protection of child rights

The state commissions for the protection of child rights (SCPCR) were to be established in each state as per the provisions of the commissions for protection of child rights act 2005. The objective of those commissions is to protect the children from various types of exploitation and to supervise the application of laws, regulations and policies in the states. Thus briefly the aim of its establishment is to protect, promote and defend child rights in each state.

The Prohibition of Child Marriage Act, 2006

Child marriage is also a form of abuse or violation of the rights of children. In Rajasthan on *Kashia Tritiya* Day, which is popularly known as the *Akha Teej*, hundreds of child marriages are openly performed. *Akha Teej* is regarded as the most auspicious day for celebrating marriages. Even infants who have just been born or are only a few years old and cannot even sit or walk are married on this day. The Supreme Court of India, on February 14, 2006, made it mandatory for all marriages to be registered. It directed authorities across the country to amend their rules so that its order could be implemented within three months. This judgment could have a significant effect on child marriages because as we know child marriage is also a severe form of child rights violation.

The Right to Education Act (RTE): The Right to Education is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010.

The protection of children from sexual offences Act 2012: The protection of children from sexual offences Act, 2012, has been passed by the Lok Sabha on May, 2012. For the first time a special provision has been passed to address the issue of sexual offences against children. The Act considers every person below the age of 18 years as a child. This interpretation is a victim oriented step and does much to do away with the debate over the clash of age of consent of the child in various legislations. Furthermore, in this Act; an offence is treated as aggravated when committed by a person in a position of trust or authority of a child. The Act deals penetrative sexual assault on a child or gang penetrative sexual assault on a child.

Some other National legislation for protection of child rights violation in the country is:

- Hindu Adoption and Maintenance Act, 1956
- Probation of Offenders Act, 1958
- Bombay Prevention of Begging Act, 1959

- Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960
- Bonded Labour System (Abolition) Act, 1976
- Child Labour (Prohibition and Regulation) Act, 1986
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987
- Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994
- Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 2000

Status of Crimes against Children in the Country

Though there is no dearth of normative measures in India protecting rights of the children and promoting their welfare, it is common acceptance that the children have been worst sufferers in the existing socio legal culture. The sufferings of the children have been more or less same in all countries. Even after the existence of such child welfare laws, the children of all categories whether come of well off family or hand to mouth, are either actively or passively subjected to numerous exploitations and multiple brutalities. Thus the violation of child rights in India has been the gradual metamorphosis of various sleights being practiced since the so called civilized Society came into being. Various Govt and Non Govt Organisations time and again surveyed their condition of violation, like

- In 2007, the Ministry of Women and Child Development released a study report on child abuse. The report discusses incidence of child abuse nationwide. It is estimated that 150 million girls and 73 million boys under the age of 18 years have been subjected to forced sexual intercourse or other forms of sexual violence.
- Children are our greatest hope and assets. In India there are over 400 million children. They constitute 35% of the total population and it is very shameful to say that 53% of children in India had been abused by any way.⁷
- It is alarming that, in 2011, the Crimes against children reported a 24% increase from the previous year with a total of 33,098 cases of crimes against Children reported in the country during 2011 as compared to 26,694 cases during 2010. The State of Uttar Pradesh accounted for 16.6% of total crimes against children at national level in 2011, followed by Madhya Pradesh (13.2%), Delhi (12.8%), Maharashtra (10.2%), Bihar (6.7%) and Andhra Pradesh (6.7%).⁸
- The Annual Health survey (AHS), 2010-11, presents results on children currently attending school (age 6-17 years) and Children attended before. The percentage of Children (6-17 years) currently attending schools varied from 83.1% in Odisha to 92.6% in Uttarakhand. The percentage of drop out children (age 6-17 years) is highest in Odisha (14.1%). The throws light into the existing rural - urban and male -female gaps in school attendance as well as drop outs.
- The 2011 National Census of India found the total number of child labour, aged 5-14, to be at 4.35 million, and the total child population to be 259.64 million in that age group.

- UNICEF estimates that India with its larger population has the highest number of labourers in the world less than 14 years of age.
- According to a Bangladesh based NGO named as Odhikar, from July 2011-July 2012 there were 801 incidents of rape among which in 511 cases the victims are girl children below the age of 18 years.
- In Kenya, girls are also subjected to forced genital mutilation in the early teenage years after which they are considered to have reached maturity and are quickly married.⁹

Conclusion

The Father of the Nation, Gandhiji once quoted:

“If we are to reach real peace in this world, and if we are to carry on real war against war, we shall have to be with children. And if they will grow up in their natural innocence, we won’t have to struggle, we won’t have to pass fruitless, idle resolutions, but we shall go from love to love and peace to peace until with that peace and love for which consciously or unconsciously, the whole world is hungering.”

According to the quotation it can be easily noted that, every nation whether developed or developing, links its future with the healthy and dignified growth of a child. Children are the prettiest gift to the humanity. Their rights are needed to be protected and they must be equipped with all broader human output. If a child is deprived of their childhood – economically, socially, physically or mentally, the nation will be automatically deprived of the potential human resources. From all the above discussion, it is witnessed that, ample legislations are there. Even some other activities of NGOs are there to safeguard the basic human rights and the dignity of children from various violations and exploitations. But inspite of the presence of such remedies, there is no stoppage of such type of incidents against children. Infact such crimes are increasing day by day at an alarming rate. Thus it may be mentioned that the legislature is not sufficient enough to meet the necessities of time to control the exploitation against minors.

It can be concluded with the following lines:

*“One day, the fields will stay green
And the earth black, sweet and wet
Our children will grow tall on that earth
And our children’s children
And they will be free
As the mountain, trees and birds”*

- ZAMORA

⁷ 2007 survey by the Ministry of Women and Child Development ,Govt. of India

⁸ Crime in India 2011, National Crime Records Bureau

⁹.Article: Protecting the Girl Child by an International Human Rights Organisation, named as ‘Equality now’, 2014, p. 23.