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Child Rights: Its Various Measures and Mechanism in Indian Context

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ABSTRACT

That, every child deserves a peaceful and happy life, a child for his physical and mental development and to attain fulfilment of his personality needs a violent free, abuse – free, a proper socio – economic structure which caters to all the needs of a young mind. That, it is to be kept in mind that child abuse both physical and mental are a daily routine to be found among the vast majorities of our country. That, after independence of our country India, has made various provisions in its penal legislation to counter and contest every perpetrators of crime against child. It is to be mentioned that India is a signatory to the United Nations Children Fund (UNICEF), a fundamental agency oversees the child rights related issues all over the world. That it is quite a ghastly statistics for our nation that India experiences a formidable amount of child right abuse all over the country. That, the rights of the child are abused by the perpetrators who belong to the various socio-economic backgrounds and its quite unfortunate that substantial amount of child abuse are done by persons who stands in a close fiduciary relation to the child. That, India being a functional democracy is trying to arrest the menace of child abuse by recognizing child rights and enforcing its legal machinery and building strong institutions for children.

Keywords – Child, Child Rights, Indian Penal Code, Fundamental Rights.

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace”

-Kofi Annan

I. HISTORY OF CHILD RIGHTS

All children deserve a happy childhood and a dignified life safe from violence, exploitation, neglect, deprivation, discrimination. Children are the most important asset of any nation. Child rights are the important safeguard to children in this purpose. Child rights are the

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indispensable part of the Human Rights with specific view to the rights of protection and care to the children. It includes basic needs like education, psychological, health food to be given to the children for their utmost development. The idea of special care to the children emerged in France during mid 19th century. Several laws and regulations were introduced to protect them in the work place along with educational rights. In 26th September 1924 historic ‘Geneva Declaration’ was made on children rights proclaiming “Humanity has to do its best for the child”.³

World experienced immense suffering owing to Second World War. The condition of children became very pathetic. Millions of children were displaced, homeless, refugees in the aftermath of Second World War. To meet the challenges on 11th December 1946 United Nation General Assembly established United Nations Children Fund (UNICEF). It is responsible for providing humanitarian and developmental aid to children worldwide. Since beginning UNICEF has been vocal on children rights. During the 1980s U.N Commission on Human Rights was assisted by UNICEF in the drafting of the convention of the Rights of the child. UNICEF has been actively working in India since 1949 and running various projects of United Nation’s development projects, Millennium Development Goals.⁴ In 1959 the declaration of the child (DRC) was adopted by United Nation General Assembly. Later it was popularly known as United Nation conventions on the Rights of the child (UNCRC). It was unanimously adopted by UN General Assembly on 20th November 1989. It includes 54 articles specified economic, social, cultural, rights to children. It explicates civil rights, freedom, family, environment, alternative care, basic health and welfare, education, leisure and cultural activities; and special protection measures.⁵

II. CHILD RIGHTS IN INDIAN CONTEXT:

India is a nation to 472 million children live in huge diversity. India is called a ‘young nation’ in terms of youth population. Since its independence priorities have been given to the development of child. But if we look back to our ancient time, children upbringing and care always have been central concern in our society. That the concept of child right has been an issue that has been long debated as to ascertain its scope, ambit and implementation amongst the academic faculty of varied discipline, judges, lawyer, various right groups and myriad stake holders working constantly for protecting one of the most vulnerable group of the

³ Geneva Declaration of the Rights of the Child 1924, (September. 13, 2020), <https://www.humanium.org/en/geneva-declaration/>.

⁴ UNICEF India, (September. 13, 2020), <http://www.unicef.org/india/>.

⁵ United Nations Convention on the Rights of the child, (September. 14, 2020), <https://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/childfriendlycr.pdf>.

society. Leaders like Raja Rammohan Roy, Mahatma Gandhi, and Pundit Jawaharlal Nehru were vocal on children suffering during the British rule. Their efforts made inclusions of constitutional provisions for the survival, development, protection of children in the constitution of independent India under Part III 'Fundamental Rights' and Part IV 'Directive Principles of State Policy'. These principles reflect all ten principles adopted by the 'Universal Declaration of the Rights of the Child' nine years later in 1959. Article 14 of the Indian Constitution deals with Right to equality specially for woman and children; Article 15 exhibits no discrimination based on religion, race, caste, sex; Article 23 deals with forced labour which is a serious concern to children in India; Article 24 is prohibition of employment of children in factories, etc. Article 45 reflects provision for early childhood care and education below the age of six years. Furthermore Article 51 directs that the State to "foster respect for international law and treaty obligations".⁶ Five years plan policies were prevalent to increase the resources and facilities for tackling the needs of children in India. National Policy for Children in 1974 recognized children as the "nation's supremely important asset."

III. CHILD LAW IN INDIAN CONTEXT

The Indian Majority Act 1875 defines children as any person who is below the age of eighteen years and this dictum of age is almost reflected in every major Indian Statutes and legislation. That, broadly speaking Indian children have certain privileges from ascertaining them liability or them being called perpetrators of crime. That Indian Penal Code recognizes the absenteeism of any intention (*mensrea*) in a child and hence no criminal liability can be attributed to a child. That Section 82 of the Indian Penal Code states "Nothing is an offence which is done by a child under seven years of age. That the penal provision in Section 83 of Indian Penal Code states "Nothing is an offence which is done by a child above seven years of age and under twelve, who has attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion. The joint reading of the two before delineated sections can help us in drawing a conclusion that, the cognitive faculty or the mental element is presumed to be totally negated in a child under seven years of age and whether any criminal liability can be ascertained to a child between seven and twelve years is to be taken in consideration by looking into facts and consideration of each case. That moreover keeping in view of a delicate mind of a child and various subtle nuances incorporated within a child, a child under eighteen years of age if convicted / accused of any

⁶ M. LAXMIKANT, INDIAN POLITY 8.9 (2016).

offence is not send to any regular court for trial, rather a child in conflict with law or a child in need of case and protection are dealt according to the relevant provision of The Juvenile Justice (Care & Protection of Children) Act, 2015. The act mentioned herein before prescribes mode & methods & nature of punishment to be adjudged to a child in conflict with law, the case & precautionary measures needed while dealing with a child.

That in today's world of post truth era, where our traditional cultural values are fast eroding we as a society stands on the verge of many new challenges, as socio-cultural structures of our country are getting destabilize and children of our country cutting across socio-economic strata are daily exposed to various scope of abuse and hence each and every day new scope for deterring the future child abusers and punishing child crime perpetrators need to be thoroughly examined. That, a child, is abused at various levels in a socio-economic structure. That, a child remains firstly within his or her parents, his or her immediate family, his or her neighbour and friends and thereafter under the loco-parentis of his school and also maintains fiduciary relationship with various close associates and there in his various stage of engagement have to encounter unwelcome circumstances. That various studies have shown that child in our country is prone to abuse from persons who are known to him. That the given psychology that works with the child crime perpetrators are that, those abused and molested could not speak for themselves and report it to proper authority, so that the perpetrators could be punished, they exploit the position of trust and Indian society with all its hypocrisy and taboos, do not aptly report crime against child from a premonition that nothing would work and it would further lower the prestige of the victim family and then starts the process of victim shaming and name calling.

IV. STATISTICS OF CONVICTION FOR VIOLATION OF CHILD RIGHTS

As many as 109 children were sexually abused every day in India in 2018, according to the data by the National Crime Record Bureau,⁷ which showed a 22 per cent jump in such cases from the previous year. According to the recently released NCRB data, 32,608 cases were reported in 2017 while 39,827 cases were reported in 2018 under the Protection of Children from Sexual Offences Act (POCSO). POCSO Act, 2012 is a comprehensive law to provide for the protection of children from offences of sexual assault, sexual harassment and pornography. It requires special treatment of cases relating to child sexual abuse such as setting-up of special courts, special prosecutors, and support persons for child victims.

⁷ National Crime Records Bureau 2018, (March. 7, 2020), <https://ncrb.gov.in/en/crime-india-2018>.

According to NCRB,⁸ report as many as 21,605 child rapes were recorded in 2018 which included 21,401 rapes of girls and 204 of boys, the data showed. The highest number of child rape were recorded in Maharashtra at 2,832 followed by Uttar Pradesh at 2023 and Tamil Nadu at 1457, the data showed. Overall crimes against children has increased steeply over six times in the decade over 2008-2018, from 22,500 cases recorded in 2008 to 1,41,764 cases in 2018, according to the NCRB data from 2008 and 2018. In 2017⁹, 1,29,032 cases of crime against children were recorded.

Priti Mahara, Director of Policy Research and Advocacy at CRY - Child Rights and You (CRY) said,¹⁰ that while on the one hand, the increasing numbers of crimes against children are extremely alarming, it also suggests an increasing trend in reporting which is a positive sign as it reflects people's faith in the system. It also provides a direction in which government interventions must be made and evidence needs to be created. While some major efforts have been taken to ensure child protection, a lot more is needed to see expected results on the ground. Mahara emphasized that financial investments must be adequately increased with a focus on prevention of crimes against children and the identification of vulnerable children and families. Strengthening community level child protection system is also a key to prevention. While there is growing evidence of the precarious lives that children in India are leading, it is essential that this evidence is used to effectively inform policy and programme initiatives.

In percentage terms, major crime against children during 2018 were kidnapping and abduction which accounted for 44.2 per cent followed by cases under POCSO, which accounted for 34.7 per cent, the data showed. According to NCRB data,¹¹ a total of 67,134 children (19,784 male, 47,191 female and 159 transgender) were reported missing in 2018. During the year 2018, a total of 71,176 children (22,239 male, 48,787 female and 150 transgender) were traced. As many as 781 cases of use of child for pornography or storing child pornography material was also recorded in 2018, more than double that of 2017 when 331 such cases were recorded, the data showed.

The state-wise segregation of crimes against children reveals Uttar Pradesh, Madhya Pradesh, Maharashtra, Delhi and Bihar accounted for 51 per cent of all crimes in the country, the data said. While Uttar Pradesh tops the list with 19,936 recorded crimes against children (14 per cent of total crimes), Madhya Pradesh and Maharashtra are the close second and third with

⁸ National Crime Records Bureau 2018, (March. 7, 2020), <https://ncrb.gov.in/en/crime-india-2018>.

⁹ National Crime Records Bureau 2017, (March. 4, 2020), <https://ncrb.gov.in/en/crime-india-2017-0>.

¹⁰ Child Rights And You, (September. 13, 2020), <https://www.cry.org>.

¹¹ National Crime Records Bureau 2018, (March. 7, 2020), <https://ncrb.gov.in/en/crime-india-2018>.

18,992 and 18,892 crimes registered respectively. The report also showed that cases of sexual harassment in shelter homes against women and children reportedly increased by 30 per cent, from 544 cases recorded in 2017 to 707 cases in 2018.¹² As many as 501 incidences were also recorded under The Prohibition of Child Marriage Act, a 26 per cent jump from 2017 when 395 cases were reported under the Act. That another brief mention for the menace for enforcing child right is that a vast majority of children in India get married in spite of the prevailing legislature for prohibition of child marriage.

According to UNICEF report,¹³ in 2005-06, child marriage rates in India were estimated to be around 47%. This figure declined to 27% in 2015-16 according to a new report published by UNICEF. UNICEF also reported that the child marriage was wide spread in three Indian states (Rajasthan, Bihar and Bengal) and there is a 40% prevalence of child marriage in these states. Javier Aguilar, UNICEF's chief of child protection, stated that the India accounts for the highest number of child marriages in south Asia given its size and population.

According to 2011 nationwide census of India,¹⁴ the average age of marriage for women is 21.2. In the age group 15-19, 69.6% of all women surveyed in India had never been married. The states with highest observed marriage rates for under-18 girls in 2009, according to a Registrar General of India report, were Jharkhand (14.1%), West Bengal (13.6%), Bihar (9.3%), Uttar Pradesh (8.9%) and Assam (8.8%). According to this report, despite sharp reductions in child marriage rates since 1991, still 7% of women passing the age of 18 in India were married as of 2009. UNICEF India has played a significant role in highlighting the Indian child marriage rate prevalence data from its 1990s study.

Several activists have expressed skepticism regarding the decline in child marriage cases in India. They believe that 'the UNICEF report might not be reflecting reality on the ground and the numbers are likely not as low as they appear in the report. They postulate that the data relating to child marriage is collected by local government and not by UNICEF. In India, the government asks about the age of bride and groom as a part of census data, which is collected every year. However, since the people know that child marriage is illegal in India, so they are less likely to tell the authorities that they have broken the law. Dhruwarakha Sriram, child protection specialist at UNICEF India, says that "everyone knows that there is underreporting in India - even the UNICEF is aware of it". According to Sriram, people are aware of the

¹² National Crime Records Bureau 2018, (March. 7, 2020), <https://ncrb.gov.in/en/crime-india-2018>.

¹³ United Nations Children's Fund report, (September. 13, 2020), https://www.unicef.org/protection/files/Final_India_Unicef_Rosa_Online.pdf.

¹⁴ Census of India 2011, (September. 13, 2020), <https://www.censusindia.gov.in/2011Census/pes/pesreport.pdf>.

illegal age of marriage in India, so they are less likely to tell the truth, which in turn leads to underreporting.

Kriti Bharti, who runs a Non-government organization called Saarthi, said that people in Rajasthan have come up with ways to evade the law. The people in Rajasthan hold marriage ceremony at night with only small group of people attending the marriage which reduces the chance of neighbor or relative alerting the police. Once the marriage has taken place, the underage bride is not sent to live with her husband until she reaches puberty. This way, even if the authorities have been tipped off, the families can simply deny any wrongdoing. Bharti states that 'in some parts of India, authorities are not always interested and child marriage may be accepted as a part of the culture.'¹⁵

In response to the plea (Writ Petition (C) 212/2003) of the Forum for Fact-finding Documentation and Advocacy at the Supreme Court, the Government of India brought the Prohibition of Child Marriage Act (PCMA) in 2006¹⁶, and it came into effect on 1 November 2007 to address and fix the shortcomings of the Child Marriage Restraint Act. The change in name was meant to reflect the prevention and prohibition of child marriage, rather than restraining it. The previous Act also made it difficult and time consuming to act against child marriage and did not focus on authorities as possible figures for preventing the marriages. This Act kept the ages of adult males and females the same but made some significant changes to further protect the children. Boys and girls forced into child marriage as minors have the option of voiding their marriage up to two years after reaching adulthood, and in certain circumstances, marriages of minors can be null and void before they reach adulthood. All valuables, money, and gifts must be returned if the marriage is nullified, and the girl must be provided with a place of residency until she marries or becomes an adult. Children born from child marriage are considered legitimate, and the courts are expected to give parental custody with the children's best interests in mind. Any male over 18 years of age who enters into a marriage with a minor or anyone who directs or conducts a child marriage ceremony can be punished with up to two years of imprisonment or a fine.

That to conclude one must state that to curb violence against child all stake holders and society at large must come together to form an uniform army to tackle this serious ailment which is working as a great hindrance for the progress of the Indian society. That as argued above India is a young nation and to gain the demographic dividend India needs to stand up

¹⁵Saarthi Trust, (September. 14, 2020), <https://www.sarthitrust.com>.

¹⁶The Prohibition of Child Marriage Act, (September. 14, 2020), <https://legislative.gov.in/sites/default/files/A2007-06.pdf>.

as one nation and must address this alarming child rights problem and the violence that is meted out to the most vulnerable section of the society. That the Indian society as a whole, its people, its police, prosecutors, judiciary all needs to work hand in gloves for a better India where each child can attain to his fullest ambition and aspirations.

V. CONCLUDING REMARKS

Different types of child abuse have been a serious problem from long time in this country. India is one of the signatories of the 193 countries that are signatory to the United Nations Convention on the Rights of the Child (UNCRC). These rights include - i. Promoting healthy lives to children, ii. Providing quality education, iii. Protection against abuse, exploitation and violence, labour, child trafficking and sexual abuse. But India has to put more efforts to combat against the abuses regarding children. Still a significant portion of children are subjected to force labour as factory workers, domestic servants, beggars and agriculture workers. Children have been used as armed combatants by some terrorist and insurgent groups in several frontier areas in the country.

We as citizen have more responsibilities towards the welfare of children. We as the citizen must build community-based safety nets like such as children's club, village and block level vigilance committees. Strengthening integration and coordination between people and Government departments. Government must take initiatives to sensitise people and families on child rights and provide them adequate information regarding various social protection programmes. We have to build awareness programs in village, local schools, among kids of the poor families and public to be alert of being victimised by the help of NGOs and Police officials. Education is urgent than any other need. Every child left out the school suffer a lifetime of lost opportunity as the child could develop to the fullest potential and overcome poverty, exploitation. Framing of economic and social policies of social protection and to create employment opportunities, promote livelihood, literacy, other skills can lead towards a big hope of prohibiting child abuses in the society. But remedies are useless until these are accessible and enforceable. So, it is a great challenge for us as countrymen to uplift the vulnerable condition of deprived children in our society.
