



CHILD RIGHTS CENTRE

CHANAKYA NATIONAL LAW UNIVERSITY, PATNA



बाल अधिकार वाणी: CNLU CHILD RIGHTS BULLETIN



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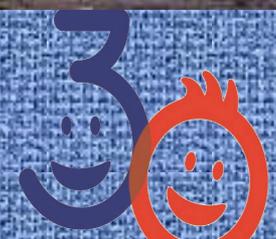
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CRC30 YEARS
CONVENTION ON THE RIGHTS OF THE CHILD

EDITORIAL NOTE



On behalf of the Editorial Board and my co-editors, I am glad to present the articles digest of CNLU, Child Rights Bulletin "Bal Adhikar Vaani". The objective of this Newsletter is to publish up-to-date, high quality and original research paper alongside relevant and insightful reviews. As such, the newsletter aspires to be vibrant, engaging and accessible, and at the same time integrative and challenging. It is the support of our Vice Chancellor, Justice (Retd.) Mridula Mishra, the hard work of our editorial team, and the commitment of our faculty members we are able to commemorate the release of this issue, and we hope that this tripartite support continues in the future.

This issue has fifteen articles written by eminent professors, judges, activists and students. The first article is "*An analysis of Presumption of guilt under the POCSO Act: Issues and Concern*" written by **Mr. Kishor Kunal**, J.M Ist Class, Motihari. He discussed the presumption of guilt clause which is provided in Section 29 of the POCSO Act, 2012. This section is applied on the offences committed under Section 3, 5, 7 and Section 9 of this Act.

Dr. Vijay Kumar Vimal, Faculty, Chanakya National Law University, Patna and **Ms. Wagisha** has contributed her article on "*Education of Marginalized children In India: An existing challenge.*" In this, they put concern on the discrimination faced by marginalized children in their schools due to the low-income of their parents and social backwardness. Gaining an education is a distant dream for them even after their "Right to Education" which is enshrined in the Constitution of India.

Dr. Priyamvada Tiwari, Asst. Prof. Indore Institute of Law, Indore put emphasis on the importance of education in this contemporary world through her article "*Empowering Children: Education as a pathway to children rights.*" In this, she discussed the "Right to Education Act" and its provisions.

Later, an article "*The Suffering Future of Our Country*" written by **Ms. Aishwarya Patnaik** and **Ms. Tanushreya** has discussed on the cyber-crimes committed against children. They have put special emphasis on the children pornography which must be deracinated from society.

Ms. Amrita Singh, Assistant Professor, Shri Vaishnav School of Law, Sri Vaishnav Vidyapeeth Vishwavidyalaya, Indore draws attention towards the rights provided to every child in the United Nation Convention on the Rights of the Child through her article "*Children: Future of the Nation.*" She writes about the importance of rights which should be provided to every child; so that his/her growth is ensured.

Ms. Ananya Jain raised the issue of crimes committed by juveniles through her article "*The Social Milieu for Juvenile Delinquency.*" She deliberated about the various factors which are responsible for the Juvenile Delinquency. In conclusion, she has given few suggestions in order to minimize this problem from our society.

In the article "The Condition of Refugee Children and Crises", **Ms. Ananya Rai** concerned herself with the problem faced by refugee children throughout the world. She arose the question on the contribution of developed countries to deal with the misfortune of the refugees of Syria, Yemen, South Sudan and Afghanistan.

Mr. Ashutosh Aggarwal put light on child trafficking through his article "Issue Concerning Child for the increasing rate of child trafficking in India. In Conclusion, he wrote about the suggestion which can be adopted in order to curb this problem from society.

Ms. Divyanshi Jha discussed the origin, causes, consequences and legal of child prostitution through her article "Child Prostitution: From Tiny Hands to Stolen Dreams!" She presented the statistics to show how much this problem is escalated. She has stated few recommendations to extirpate this from the world.

"Caste and discrimination- Perpetuation of hegemony in the context of child labour", an article written by **Mr. Ishan Bhatnagar** highlighted the issue of the caste system which is prevailing in the Indian society. He mentioned that one of the main reasons for child labour is the caste system in Indian society.

Ms. Megha Shrivastava deliberated about the condition of children engaged in manual scavenging through her article titled, "*Stinking Reality of Secluded Childhood.*" She put emphasis on the need to remove this issue in order to secure the rights of the child in society.

Mr. Sarthak Mongia discussed the children's right to play through his article "*Right to Play*". He laid down the importance of playing in the life of a child.

Mr. Tushar Bhel has written about trafficking of refugee children through his article "*Compact Step in Restoring Cultural Normalcy in the Lives of Refugee Children*". He has specified various international convention and Indian Legislation which is functioning for protecting the rights of refugee children.

Mr. Bhaskar Kumar concern himself with the violation of child rights in the name of the culture and traditions. In this, he has focused on Female Genital Mutilation, which is practised in various parts of the country in the name culture and tradition.

Ms. Aswathy Sukumaran Ettungapady wrote down the issue of parental neglect through her article "When Guardian Angels Turn Demons: Parental Abuse and Neglect". She has advocated that parents should be in concern to take proper care of their child.

At last, there is a Hindi article written by our Programme Coordinator, **Mr. Chandan Kumar Sinha** titled "Baal Majduri Me Hai Beete Humare Bachpan." In this, he has discussed the issue of child labour, prevailing in the society.

Ms. Sneha
Editor- In- Chief

किलकारी लगी है दांव पर By VIJIT RAJ PUROHIT

बागीचो से लगे हुए मोहल्लों के गलियारों में नन्हे बच्चे आजादी से खेला करते थे,
फितरत-ए-जमाना कुछ ऐसा बदला लड़का अब खदान में तगारी उठाता है
लड़कियां गली कूचे में गिरेबान बचाती है।

अभी तो शुरु हुआ है जालिमों का जुल्म जमाने पर,
बाइज्जत बरी हुआ फिर बच्चों के अंग कटवाता हे।
थोड़ा और ठहर जाओ काफिला मुर्दों का आता ही होगा
जो नन्हीं बच्चियों से बच्चों का जन्म कराता है।

इन शैतानों का सफाया कुछ हुकूमतो ने उठाया तो है....फिर 2019 आया 23 आए 27 आए और तब सब
भूल जाए,आंकड़े भुला दिए जाए सुर्खियां दबा दी जाए?

थोड़ा आपको हमसे थोड़ा हमको आपसे मिलना ही होगा
देश का चिराग बुझ जाए उससे पहले कुछ करना ही होगा

बच्चा तो नादान है अभी समझ नहीं पाएगा और सच में भारत अगर मां है तो मां के घर मातम ही रह
जाएगा,

कितने नन्हे मासूम बच्चों की किलकारी लगी है दांव पर
कोई गिनने अगर बैठे तो गिनता रह जाएगा,
किताबों में कविता मे और वीडियो में कहने का क्या मतलब जब गरीब का बच्चा जिंदा ना रह पाएगा
यह पढी-लिखी आवाम कुछ मुट्टी भर लोगों को काबू में ना कर पाइ
तो मासूमों के हिफाजत की मुहिम का वजूद क्या रह जाएगा।

बच्चों की जो चीखें निकाले उन शैतानों का सफाया करना ही होगा नहीं तो इंसान और हैवान में अंतर क्या रह
जाएगा

"अभी एक और तहलका मचाना ही होगा मुट्टी भर जल्लादों से पूरी नस्ल को बचाना ही होगा,
तस्करी यहां बहुत हो गई बच्चों की बाजारों में अब इनका का बदला तस्करो की मौत से चुकाना ही होगा"

के अभी भी मौका है नादानों पर जुल्म करना बंद करो और ना समझ सको तो सत्य से द्वंद करो
मासूमियत और सच्चाई पर रहम खा कर देखो,
इंसानियत तुम में भी है जरा अपने बचपन में जाकर देखो।
बस ये मुहिम हमें थमने ना देना है
भारत के किसी भी बच्चे को पीड़ित और दुखी होने ना देना है



An analysis of Presumption of guilt under the POCSO Act:
Issues and Concern:
Kishor Kunal, J.M Ist Class, Motihari & Research Scholar Ph.D,
CNLU

“Presumptions are bats in law; they fly in a twilight but vanish in the light of facts”-An Eminent Jurist

The Protection of Children from Sexual Offences Act (Hereinafter POCSO Act) was legislated keeping in view the fundamental concept under Article 15 of the Constitution of India which empowers the State to make special provisions for children and also Art. 39(f) which provides that the State shall in particular direct its policy for securing that the 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. The main purpose of legislating the Act was for reduction of child abuse and protection of children from the offences of sexual assault, sexual harassment and pornography etc.

It was held in *Laxmi Kant Pandey v. UOI* that the child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realization of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process.

Purpose/ Object of the Presumption of guilt Clause :

To understand the purpose or object of the Presumption of guilt clause under Section 29 of the POCSO Act-2012, there is need to understand the main object behind the enactment of POCSO Act-2012.

Keeping in view the low conviction rate of sexual offences against children and protection of the best interest of child a presumption has been provided under Section 29 and 30 of the Act, that the accused in case of sexual assault has committed the offence unless proved contrary. Vulnerability of the victims and the difficulty in collecting the evidence were the two factors leading to such a provision being incorporated in the Act. Misuse of such a provision had also been taken care of by including a safeguard therein.

Absoluteness of Presumption:

The question is that whether the statutory presumption under Section 29 of the POCSO Act is absolute or legislature by way of Section 29 of the POCSO Act withdrew the presumption of innocence from the accused. The cardinal principle of Criminal law is that every accused is presumed to be innocent unless the guilt is proved beyond all reasonable doubt. This principle is subject to the statutory exceptions like NDPS Act, Negotiable Instrument Act, Indian Evidence Act, Prevention of Corruption Act etc. However, in these statutes certain foundational fact has to be established by the prosecution before triggering the presumption. The question is whether prosecution can be absolved from its liability to prove the guilt of the accused beyond all reasonable doubt in order to draw a presumption in favour of prosecution under Section 29 of the POCSO Act. There may be difficulty in providing a negative fact. However, in case where the statute does not provide for the burden of proof on the accused, it always lies on the prosecution. It is only in exceptional circumstance, such as those of statutes as referred to herein- above that the burden of proof is on the accused which is also known as reverse onus clause. The statutory provision even for a presumption of guilt of the accused under a particular statute must meet the tests of reasonableness and liberty enshrined in Articles 14 and 21 of the Constitution. It was held in *Amol Dudhram Barsagade vs. State of Maharashtra* that the statutory presumption would stand activated only if the prosecution proves the foundational facts, and then, even if the statutory presumption is activated, the burden on the accused is not to rebut the presumption beyond reasonable doubt. Suffice it if the accused is in a position to create a serious doubt about the veracity of the prosecution case or the accused brings on record material to render the

prosecution version highly improbable

The author's view is that once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour. In other words, the onus of proof shifts upon the accused that he has not committed the offence and he is innocent. It is very difficult to prove negative facts.

However, in order to prove a contrary fact, the fact whose opposite is sought to be established must be proposed first. It is, therefore, an essential prerequisite that the foundational facts of the case must be established by the prosecution by leading evidences first, only then, statutory presumption is triggered in to shift the onus on the accused to prove the contrary under Section 29 of POCSO Act. In other words, once the prosecution proves the foundation of case on legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence. He may do so by establishing an evidence of such nature that a man of ordinary prudence would most probably draw an inference of innocence in his favour. The accused may achieve such an end by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by exposing the patent absurdities or inherent infirmities in their version by an analysis of the special features of the case.. Otherwise, it would compel the Court to mechanically accept the mere ipse dixit of the prosecution and give a stamp of judicial approval to every prosecution, howsoever, patently absurd or inherently improbable it may be.

Conclusion :

Thus, Statutory presumption under Section 29 of the POCSO Act cannot be read to mean that the prosecution version is to be treated as gospel truth in every case. The presumption does not take away the essential duty of the Court to analyse the evidence on record in the light of the special features of a particular case, eg. patent absurdities or inherent infirmities in the prosecution version or existence of entrenched enmity between the accused and the victim giving rise to an irresistible inference of falsehood in the prosecution case while determining whether the accused has discharged his onus and established his innocence in the given facts of a case. The **Term "Unless the Contrary is proved" in section 29 should be read first, and it is the duty of prosecution to establish & prove its case and only then a presumption under section 30 can be drawn.**

Education of Marginalized children In India: An existing challenge

Dr. Vijay Kumar Vimal, Wagisha

(Faculty of Law, Chanakya National Law University, Patna & Student, Symbiosis Law School, Hyderabad)

“Knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family.”-Kofi Annan

Education is one of the key of the evolution of world and society. It not only leads to an individual's development but also leads to the opening of the door of new era of advancement in various fields. It seeks to the promotion of individual basic human rights and empowerment. Recognizing education as a basic human right, Article 26 of Universal Declaration of Human Rights, 1948 ascertains that “education shall be directed to the full development of

the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among.....racial or religious group.”

India, a land of diversities has always sought to ensure the availability of this basic right to every section of the society. Realizing its importance, Article 45, 41 etc. in the Directive Principles of State Policy was inserted by the constitution framers into the Indian Constitution with intent to make educational needs a part of state responsibility. However, this right got more prominence with the insertion of Article 21A into the Indian Constitution vide 86th Constitutional Amendment Act of 2002. Article 21A guarantees free and compulsory education to children from six to fourteen years of age. *A corresponding duty was levied upon the parents/guardians under Article 51 A (k). To give effect to the same, the Right of Children to Free and Compulsory Education Act was promulgated in 2009 with a view to enhance the overall quality of education in the country. However, despite the massive statutory framework, the idea of “free and compulsory education” remains to be a distant dream for the nation. Especially ensuring education in terms of marginalized section of the society is a still a task for which the Indian government are tearing their hair out. According to the survey report of Agrasar group, an NGO, 75% of marginalised children face more punishment by teachers often in form of severe violence due to the low-income of their parents and migrant background. The report further noted that the social norms are also responsible behind this as it justifies certain forms of violence, especially against underprivileged children. Moreover, despite enactment of Right of Children to Free and Compulsory Education Act, 2009, India is not able to put a halt on the discriminations faced by these children. The bitter experience of Madhu in 2013 regarding the act of a government school in Patna evidently speaks of such discrimination. She was shoed away on the ground that she hailed from the community of Musahar Dalit and was ‘dirty’. Similar kind of grievances were shared by dozens of parents and children from marginalized community in the same hearing called by visiting officials from the National Commission for Protection of Child Rights in charge of monitoring the implementation of the Right to Education Act. After hearing Madhu's story, the commission intervened and 50 Dalit children from her slum were enrolled in an adjoining government school. But a year later, while the school's register included the names of the Dalit children, nearly all of them were out of the classroom, working as rag pickers. They were just not welcome there. Though schemes like mid-day meal were successful to some extent in enrolling more and more children into the schools but it has also failed drastically in putting a halt to the high number of school dropouts. As the estimations of the Indian government, six million children remain out of school – and more crucially, two out of five drop out before completing elementary schooling. Numbers are much higher for children from disadvantaged groups. Furthermore, government schools are more a risk factor and less a temple of learning as it offers nothing but challenging working conditions, lack of professional conduct among teachers, absent school governance and inadequate teacher training which in turn leads to an environment that fosters violence against children.*

Indeed, there are challenges which need an immediate response from the government but above all, there is an urgent need of proper monitoring and Redressal mechanism in the present day government schools. Today, such mechanism should be setup not only by the efforts of the government but also by the community. A community based approach is a must at this juncture. Government can introduce school adoption schemes somewhat similar to the Sansad Gram Yojana Scheme. Lastly, as noted by Amartya Sen “education is the backbone of India” needs to be understood by every Indian in its true sense so that India can march not only to mars or moon but to a well developed, empowered and awakened society for making the world a better place to live. The four As of right to education viz. Availability, Accessibility, Acceptability and Adaptability needs to be followed in practice to make India, once known to be a land of great ancient educational institution like Nalanda and Takshila, glow once again before the international community as a great protector of educational rights.



Empowering Children: Education as a pathway to children rights: Dr. Priyamvada Tiwari, Assistant Professor of Law, Indore Institute of Law

“While much effort has gone to frame the right to education, slow implementation risks depriving a generation of children of the basic human right to education.” -Justice Madan B Lokur

The development index of a country depends on the quality of the Human Resource. Children are the future of this country and thus, there arises a greater responsibility on part of the state to ensure a proper development of children of a country. According to United Nations Convention on Rights of the Child (UNCRC), “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

This gives various countries, the freedom to fix the age limit in determining who is a child. In India according to the Juvenile Justice (Care and Protection of Children) Act 2000, any person below the age of 18 is considered as a child, therefore there is a need to treat them separately under the different purview of law. And so there are different provisions in our legal system to ensure that children do not suffer any ailment due to prevalence of similar legal system.

Similar is the case with the education system of a Country. The children are considered as the assets of the nation and thus it becomes important for a country as well as the stake holders to empower the children to the best of the way they can. If we talk about India, which is having the Constitution as the guardian to protect the rights of every individual, in the form of fundamental rights and the legal rights, has made a valuable contribution into the empowerment of children by way of a very important amendment into it i.e. constitutional 86th Amendment into year 2002, making ‘Right to education’ a fundamental right by adding new Article 21A into it which made right to education a fundamental right for children between 6-14 years describing the modalities of the importance of free and compulsory education, and it is the State who should strive for it. As we can see there are still lo many children who are deprived of their right to education mostly in rural areas where there is poor infrastructure in the schools as well as lack of teachers. There is a need of education for development and that while India has a range of progressive legislations, governments are lethargic in their implementation. Only 8 per cent schools across the country comply with the provisions of the Right to Education (RTE) Act, according to a study by a civil society group in year 2018, on implementation of the act. And while vacancies for the posts of teachers remains to be a serious issue, the study suggest that almost 20 per cent of teachers in India are untrained.

Free education’ means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. ‘Compulsory education’ casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.

The RTE Act provides for the:

Right of children to free and compulsory education till completion of elementary education in a neighborhood school.

It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the six to fourteen age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.

It makes provisions for a non-admitted child to be admitted to an age appropriate class.

It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.

It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.

It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.

It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,

It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child’s knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning

With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act. Article 21-A and the RTE Act came into effect on 1 April 2010

Title: The Suffering Future of Our Country :

Author (s): Aishwarya Patnaik, TanuShreya



India accounts for the world's largest child population. Its deprivation of basic material and non-material needs become a concern not only nationally but also globally. The children are born into families that are part of a community, which is, in turn, a part of the country. The rights of children are therefore inextricably linked to the rights of their families and inevitably the communities.

India's stance has apparently crossed the inflexion point, and the direction it decides to move towards is going to draw a blueprint for the future discourse, as well as to epitomize the interventions and policy making. However, the definitive conceptual framework of the Indian epistemic community is terrifically impermeable and generally oblivious to the European and North American countries' methods, which can be highly germane for the Indian context, provided necessary and relevant modifications are kept into consideration. On the contrary, researchers and policymakers from the north would solemnly renounce the equally simplistic insight that developed countries can afford to bring their focal point to the child wellbeing, while the developing and under-developed countries should focus on poverty elevation for consequent child wellbeing.

Universally, there is a host of the index that can throw light on the wellbeing of children in a country. Many of these are specifically oriented to the lives and needs of children but mostly their experience of existing in a community.

As per the data released by the National Crime Records Bureau in 2017, crimes against children in Bihar alone have seen an elevation of about 36% in the last 5 years (2015-16). A distressing 1,917 cases of crime against children were reported in the year 2015, whereas the forthcoming years saw the numbers add on to 3,932 cases of crime against children. These numbers and figures are a clear indication of failure in child protection mechanisms in the state of Bihar. The question that needs to be answered is whether Bihar has failed in its policy framework or in the implementation of those policies? Despite having numerous legislations in place such as the National Policy for children, The Protection of Children from Sexual Offences act, 2012, National Commission for Protection of Child Rights and the Prohibition of Child Marriage Act, 2006 for the protection of the rights of children, there is a gap in the state level administration and administration of these laws. The gap can be attributed to various social as well as economic factors which are specific to certain states such as state budget and the law enforcement organization in a particular state. In the state of Bihar, an increase in crimes against children can be attributed to lack of facilities in schools, the inhibitions surrounding sex education, lack of seriousness about child-related issues etc.

A recent probe by the Cyber Space Foundation has revealed a disturbing number of members on Whatsapp sharing photos and videos of sexual abuse involving children, most of them canvassing physical contact. Various child rights bodies demanded stringent action against the perpetrators of such acts. WhatsApp responded by saying that it is outraged by such acts and has also reportedly banned about 2,50,000 accounts for such an act. Another article reported that India is amongst those who top the list for perpetrating child pornography. These numbers show that an increase in crimes against children is a global phenomenon however the aforementioned statistics regarding an increase in child-targeted crimes are disturbing and need immediate attention of the nation as well as state authorities. In terms of the laws pertaining to child pornography in India, the only law in place is the Section 67B of the Information Technology Act, 2000 which is evidently insufficient. According to the International centre for missing and exploited children, Hong Kong is the only country in Asia and the Pacific which has substantial laws in place for child pornography and related crimes. Although the Information Technology Act, 2000 prescribes punishment for child pornography, it does not define what child pornography is. What constitutes such a heinous crime and what may not fall within its ambit is a gap that needs to be filled by first defining child pornography. Having no definition for such a crime leaves the victims at the mercy of interpretation that in case of children can be a life-scarring experience. According to an article authored by Esteban Ortiz-Ospina, children who are victims of physical or psychological abuse perform poorly at school in comparison to children who have not faced such abuse. By neglecting to ensure stringent implementation of child welfare laws and schemes, the authorities and the government is not only endangering the present of such children but also hampering their future and so invariably tainting the future potential of the country.

In states like Bihar, Haryana, Assam and West Bengal, where communities are ensconced in the ambit of poverty, their vulnerability makes them inevitable targets to crimes like child sexual abuse and child pornography subsequently. Most of such cases do not surface, as they remain hushed within the community because of their financial susceptibility.

A plausible reason why we are unable to target the cancerous problem is because of our system's negligence in various dynamics. Pawan Duggal, a renowned lawyer and IT expert tells that India has no database of crimes related to child pornography and their offenders. It highlights major fecklessness on both national and state levels. Another example can be seen from a "Draft for Discussion" by "The Bihar State Policy for Children, 2017" which accounted for important topics like education and development, health and nutrition, protection, coordination, action and monitoring, which would have helped to reduce the concerned problem to a great degree. It is time for India to catch up with best practices as other countries, and given the impressive dimensions of India's academic and professional infrastructure, this should not be an unrealistic goal.

Children: Future of the Nation: Amrita Singh



The term “*Child*” derives from the Latin term “*infant*” which means “*the one who does not speak*”. In Roman terminology, this term designates the child from its birth, up to the age of 7 years. According to the “*Convention on the Rights of the Child of 1989*,” the term Child means “*a child as any human being under the age of eighteen unless the age of majority is attained earlier under national legislation*”. Prima facie, Child rights include the right to be identified, family life, health, education, development, the standard of living and protection from abuse & harm. Children’s rights cover their growth and age adequate needs that change over time as a child grows up.

Children’s Right: Human Rights

Basically, Children’s rights are covered under human rights. This protection is available to the child as a human being. Children’s rights consist of fundamental rights & necessary human rights. Children’s rights recognize fundamental rights which are guaranteed to all human beings, the right to life, the non-discrimination principle, the right to dignity through the protection of physical and mental integrity (including protection against slavery, torture and bad treatments, etc). Moreover, Children’s have different conventional rights, such as civil and political rights includes the right to identity, the right to nationality, etc. and other economic, social and cultural rights include right to education, the right to a decent standard of living, the right to health, etc. Children’s personal rights include the right to live with his parents, the right to education, the right to benefit from protection. Children’s collective rights include rights such as refugee and disabled child’s right, of minority children or from autochthonous group’s right.

UN Committee on the Rights of the Child highlighted the general principles that were to help in the interpretation of the Convention on the rights of the child as a whole and thereby guide its implementation. These principles draw much from Articles 2, 3, 6 and 12 of the convention itself.

Non-Discrimination i.e. all children shall enjoy their rights equally and shall not be subjected to any discrimination it is the duty of party states to ensure and respect all the rights given in the Convention without any discrimination.

Best interests of the child must be protected and all actions were taken by any public or private institution, courts, authorities or legislative bodies shall be in the best interest of the child.

The right to survival and development which is far more than right not to die is directly related to children’s economic and social rights is based on the right to life article.

The opinion of the child shall be respected, In order to know what is actually in the interest of the child it is logical to listen to him or her. The opinions of the child must be given due weight in accordance with the age and maturity of the child.

In India, child rights, protection and exploitation (street children, child labour, trafficking etc.) are intimately linked to poor socio-economic conditioned in a large population base. Survival, early child health care, nutrition, education, development and child protection are most crucial child rights. Illiterate parents are ignorant of their children rights. They must be made aware of child rights, must demand and fight to obtain them. Multidisciplinary child professionals should work together and monitor government efforts in the protection of child rights. They should be able to collate available national child health indicators, address key issues and concerns in their region, involve children in research and facilitate their participation in projects and policy development. There is an urgent need to assign responsibility and accountability to government, elected representatives, policymakers, proximate community and education and empowerment of families. In any case, a child must not suffer, if the parents can’t provide care and protection.

THE SOCIAL MILIEU FOR JUVENILE DELINQUENCY : ANANYA JAIN



“Good habits formed at youth make all the difference”–Aristotle.

This adage seems to be fading away with the time as the youth factor is hitting the teenagers at an early stage. The various factors which are least taken care of are becoming highly responsible for the increasing juvenile delinquencies. Schools teach basic of subjects but not the basis of life. The pillar of teenage life is built on peer-pressure, thirst for adventure, becoming like their ideal, etc. Either pillar falls as soon as the desired is not achieved and the entire life is shattered into mere pieces.

The world is changing at a fast pace and the introduction of new technology or any new system will certainly affect the young minds. The children in today's generation and the upcoming one are not prone to discipline, sharing, self-control etc. Their fragile minds easily allude to every such thing which they can achieve quickly. The delinquency rate has been increasing manifold and various factors are contributing in it, Be it sociological, psychological or environmental. Sociologists associate the youth behavior with the home, family, neighborhood, peer, and many other variables that together or separately influence the formation of young people's social environment. Many scholars have provided various factors and a few of them are discussed hereinafter.

Causes of Juvenile Delinquency

Psychological Factor – “According to Freud, “Criminal or juvenile delinquent is one who is suffering from weak ego control over their identity and obtaining psychic relief from being caught and punished”.

During 2012, Delhi witnessed the horrendous rape which included a minor and the most heinous act was done by him. The major factor which came forward was that he has seen other boys in his locality doing it so in the heat of sexual desire this act was committed. The boy already was in search of such an act. The adolescent wants to reach his desired goal but may find the barrier insurmountable, and tries to gratify his demand by anti-social means. These days children lack self-control, patience, love, care, guidance, etc. They lose temper on trivial problems and seek to take revenge. Their ego boosts because of the extra care provided by parents sometimes. They aren't prone to listen to anything against them. No physical punishment in schools is given to students because it will affect their psychological mind. The mental deficiency is very high in these juveniles. The adolescents do not indulge in any recreational activity, doesn't play any sports or exercise and it stops the mind to expand and learn new things. The excess burden of studies affects their minds and mobile phones, laptops, are their escape. The cutthroat competition has made the psychology of child and parents just stuck to academics.

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Sociological & Environmental Factor - The society and the environment where a person has been brought up is the backbone of the crimes committed by them. Whether it is the parent or child both of them are recognized by their social status. The gap between the social status is increasing manifold and this status is becoming a symbol of acknowledgement. Talking about Indian society, we are stuck between traditional values and the emerging concepts so neither of them can be successfully adapted. The drastic change in urbanization, technology, socialization, etc. is taking the world towards a different era. But the pace at which we are moving is badly affecting the youth of the nation. People who migrate to this industrial centre from rural areas with a rural background and cultural setting couldn't adjust themselves to the new conditions of urban industrial life. Parents have to work long hours for low wages, having no time to attend to their children. Under these conditions, parents are unable to exert control over their children and many juveniles turned to delinquent ways of life.

Sociologist Ziegler et al (1996:310) observed that “Children who are frequently exposed to environmental violence experiences the symptoms of fear, anxiety, and stress which lead to delinquent behavior in the later stage”.

The associated ingredients in an environmental factor can be:-

1) Family -Levys [1943] emphasized - "Delinquency was mainly due to defective parent-child relationship that resulted in inner-psychological disturbance on the part of the child."

Whether it is poor or urban family, none of them is paying proper attention to their children's needs. Lack of attention, care, concern, pushes a child to commit such acts and on the other hand over pampering the child also boosts its ego and he becomes short-tempered. Excess amount of monetary access to children also spoils them. Parents have a very crucial role to play during this stage of their children's lives. Sometimes the pressure which is faced by the child to obtain good marks is very much and when they are not able to fulfill the expectations their mind is controlled by their anti-social thoughts. According to data of NCRB children living with family commit more crime than compared to children who are homeless. It also includes:

(i) Broken Families (ii) Disturbed Marital Relationship (iii) Age gap between siblings.

2) Education - The data of NCRB show that literate children between classes 6th to class 10th committed the most crimes rather than those who are illiterate or who have passed the secondary examination. Hence, lack of maturity, logic and biological changes allures the child's mind to commit such crimes.

3) Gender – The statistics provided by NCRB, clearly shows that crime committed by boys are way more than girls under all age groups. E.g. - Under the age group of 16-18 during 2014, crime committed by boys is 30,648 and by girls, it is 746.

4) Peer Group -This factor can be explained by Differential Association Theory: Sutherland (1939) believes that "Delinquency is learned while interaction with other people".

The most reliable, trustworthy and greatest influencers are the peers, friends, pals, etc. To achieve self-confidence and trust at this age is to do whatever the peer group says. Generally, at every stage peers must be chosen carefully but during this stage of life, these friends play a very fragile role in moulding the amateur

minds. Many horrendous cases have been witnessed where the driving force is peer pressure. The urge to be the apple of everyone's eye in the friend circle leads these children behind bars.

Economic Issues -The poor families where the bread earner is unable to earn and the children are forced to work to make both ends meet. The middle-class families where income earned is not sufficient and children are many times deprived of their needs. In rich families, children are more prone to monetary benefits so they don't value the money. Again, a data collected by NCRB, shows that child falling in which bracket of income commits the most crimes.

Physiological factor --In analyzing the physiological factor, brain damage is considered to be the cause of delinquency. Brain damage may result from poor parental care, a difficult delivery, inadequate post-natal care, infant malnutrition and due to infections and diseases.

Causative Factors - There has been a rising trend in the delinquent activities among the youth. The tremendous increase in population in recent years bringing in its diverse social problems like a congested living, erosion of age-old values and growing unemployment among the youths has created in them a sense of aimlessness, helplessness and frustration. There are studies which report delinquents to be high in neuroticism and psychotism.

Neighborhood Conditions - It affects socially as well as psychologically. These days socialization is very important. A man always seeks another flock of men to survive. If the child does not get involved in any recreational facility after school hours this will lead to zero development of his mind and body. If he has no one to interact with he may become secluded and stubborn and irritating which may lead to delinquencies. Secondly, if the company he lives in is indulged in petty mischief then it may lead to crimes as well. An adolescent will learn and grow seeing the people around him. If he has seen violence he will be directed towards violence and if he has seen brotherhood then is directed towards the same. Meeting of some rationale minds at this age is very significant, it develops a child's personality.

Media as the over stimulating influencer –Media has been one of the biggest and long term influencers on the juveniles. Easy access to various porn websites for free is increasing the crime rate. According to a report published in Hindustan Times, the teenage boys earned to spend it to watch blue films. Such raw information allures them to commit a crime. Mobile phones and other gadgets also come very handy and at a very cheap price. The violent video games such as the Blue Whale challenge gained a lot of popularity resulting in numerous suicides. Such games affect the psychology of a teenager to a great extent destroying their lives. The movies, T.V. shows, etc. shows many things which develop an instinct in adolescents to do it. The cliché concept of Bollywood is to objectify

There are gaming hubs or centers situated in many cities where these children pay a handsome amount and are glued to the screens for hours and hours. The desperate need of being acknowledged by the entire world on social media is increasing day by day.

Conclusion and Suggestions

The above discussions pointed towards the fact that these developing minds need proper care, nourishment, attention, love, discipline etc. to live a healthy life and not get influenced by the alluring factors. Families played a vital role in increasing the rate of juvenile delinquencies. The other factors which are alluring the adolescent to choose this path are peers, movies, games, need of money, constant cutthroat competition. These factors affect the mind of the adolescent very deeply and they deviate from the difference between right and wrong. The adolescent boys need to be trained and disciplined more than girls. The world is changing at a fast pace and introduction of new and quick technology is making the children lazy. The coming era would be all technology pro and population will increase thrice than the current one. The gap between rich and poor will keep increasing. Puberty in boys and girls will hit very early in the coming generations. To curb and discipline these growing minds will be a tough task for parents, schools and even nation.

Suggestions:-

Parents should take care of their children's overall development.

Schools must have proper and mandatory recreational activities.

These disturbing games, movies, should be banned.

Education should be an integral part of the positive development of these children in conflict with the law.

Proper and more socialization should be done by children.

THE CONDITION OF REFUGEE CHILDREN AND CRISES : ANANYA RAI

The children are the future of any nation and their education act as a weapon to change the nation. - Anonymous



The catalogue of data can be visualized if one sees the drastic increase in the numbers that make thunder in every nerve. According to the stipulated data of UNHCR, 25.4 million refugees presently, in which 52% are children that sometimes are accompanied and unaccompanied that leads them to live their life full with unavoidable threats and violence including the personal outbreak also like become disease prone, contaminated water to drink and sanitation problem subsequent to this, refugee children also faces sexual abuse and exploitation that drag them badly out of the childhood phase and forced them to live a vulnerable lives. Furthermore, the displacement leads to space where the child even not been provided with the basic necessities that form the building blocks and trap them in poverty and gender-based disparity. The historic increase in the number of refugees started after the Syrian Civil War in 2011 that forced 4.9 million Syrians out of the country, out of which half of them are children. The same report of UNICEF came in which by estimates, 12,000 refugee children have been forced into armed groups within South Sudan. These are what called the specimen of the pre-migration stage which inculcated in their own countries where no right of human itself seen. The major countries that result in refugee crises are Syria, Yemen, South Sudan and Afghanistan. The past, as well as the present itself, tells the story about the root of refugee crises as not only because of war, children been abducted to go beyond the borders and at very early age forced to become soldiers but also to escape poverty and social deprivation they are displaced sometimes with or without their parents and witnessed the form of sexual abuse. Moreover, the second stage is the transmission or refugee resettlement period which brings many problems for the children mainly the unaccompanied one, who flee to the hosting countries that include Germany, Pakistan, Uganda and Jordan reported children missing amid. The easily vulnerable group, that is women and children faced much exploitation like the girls are at the gunpoint of sexual abuse, trafficking and cross border prostitution, the boys are forced to do labour, hazardous and life-threatening jobs and prone to slavery. The third stage, that includes living in a host country much appreciated in the asylum seekers and the refugee resettlement but the blueprint is very much different as in the migration to the host country, the problem been classified to them as under two sub-headings the first, is the traumatic experience means living away from the home, lost friends, schools and perhaps, the family as well as members, they are easy to access to abuse and exploitation with subsequently not able to mould the hunger and thirst. At the same instance, the second is the violation of child rights that refugee children face. However, with the subsequent efforts of the great and highest organization from one end to other end of this world the children under tin shed face the numerable problems as living in the such conditions where one tent has a little space from the other alter the privacy and expose them to open for other types of exploitation like right to education, no discrimination, to live with family and right to not work at coercive industries.

Subsequently, with aforementioned cases, the efforts of the UDHR and International Covenant on Civil and Political Right and International Covenant on Economic, Social and Cultural Right and the United Nation High Commission for Refugee appeal is not gone to vain. Addition to this, the adoption of the Convention on the Rights of Child 1989, is at the peak of the iceberg. The provisions that include the age of child below 18, the non-discrimination irrespective of all the social objects with the Optional Protocol that prohibit the children in the arm conflict and sale of a child includes prostitution and trafficking. But, the reports of the Global Trends itself says the increase in the number of refugee and the three stages make it difficult to be in the mid. Here, entirely there is a great need to focus on, the children need high attention to make them walk in the right path so that they must not join the followers of terror groups, perhaps they are in the great vision. Accordingly, the UNHCR reports the developing nation give major hands in the refugee crises. So, here the question arises what is the contribution of the developed nation like USA, Canada and Japan. It is the responsibility of all not only one organization or nation as to give their hands to help the needy people. As they can do it in various ways like by giving additional funds to those host countries by keeping proper eye-watch on the refugee camps for better treatment, by providing permanent residence and proper education facilities to the refugee children with the major centre of helpline especially near the camps. All of these, the awareness to the refugee children about their major rights is very important and the love for humanity must be taught because they considered being the prior targets at the time of war, conflict and migration and on the other hand children are the future of any nation and the bright light itself comes when all the important plot is fulfilled.

Issue Concerning Child Rights- Child Trafficking :Ashutosh Agarwal, Student, Maharishi Law School,MUIT, Noida

In the present scenario, there are 3 most heinous crimes in the world.: Drug trafficking, Arms trafficking and Child trafficking.

One of the world's most serious violations of human rights is the trafficking of persons and is active and existing in many forms across the world in modern society of the 21st century. Children who are trafficked are suffering the crushing impact of this very grave crime, such as unfree, bonded, exploited, and violated. Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or of receiving of payments or benefits to achieve the consent of a person having control over another persons, for the purpose of exploitation. It is a form of modern day slavery that trades and exploits children, women and men each year, violating their basic rights to life, liberty and security. From an economic lens, human trafficking can be considered as an economic activity and a consequence out of a commoditized process that profits from human mobility. From a legal lens, it is an international criminal activity that violates human rights and legal provision of the states. It is clear that human trafficking poses a problem at both the local and global level. There is an urgent need of local national regional and cooperation to combat this exploitation, local government play an important role in human trafficking preventions, victim protection and prosecutions of traffickers. This paper aims to provide overview issue of child trafficking objectives on concern parameters, current domestic law and conclusion through suggest. The highest trend of exploitation of children in India from the year 2014-2016. At least 67000 children in India went missing of whom 45% where minor trafficked into prostitution. as per the crime in India report published by the National Crime Records Bureau (NCRB) in 2016, some of the trends related to trafficking in India presented in this factsheet The total number of victims of trafficking in the year 2014 was 8,099, which increased by 13% in the year 2015, Resulting in 9,127 cases. In the year 2016, the number increased by a sharp 69% to reach 15,379. The number of trafficking cases of children also marked an increase of 131% rising from 3,905 cases in 2015 to 9,034 in 2016. A report by the ministry of women and child development revealed that there were 12 lakh children impacted by commercial sexual exploitation from 2007 to 2008. A girl is abducted every eight minutes in India. A U.S report on human trafficking states that India is one of the world main hubs for child sex trafficking. In 2010 almost one in every three missing children was untraced but in 2013 one in two missing kids was lost forever. The most common form of exploitations is forced labour with 45% of the total number of victims rescued from conditions of human trafficking. it is also observed that those in forced labour often suffer physical and sexual violence as a form of intimidation. A large proportion of victims (22%) of trafficking are targeted for the purpose of sexual exploitations through prostitution. If a child was abducted or a child was sexually harassed by someone then what law concern then how court listen to the child, then how court decide child were not in deemed position then how the court should punish the offender for his/her offence There is COUNCIL OF EUROPE GUIDELINES on child-friendly justice . There is the right of a child to participate in the justice system means to need to be able to express its views. The child needs to listen not only this the court should determine there should be the best interest of the child in proceeding to respect all rights of the child not only legal right. Respect the dignity of the child, The child needs to be protected from discrimination. During the proceeding child know the name of the judge, the judge should not wear the formal dress. The environment will be friendly. The most important thing is that Children not give there witness in front of the offender so video recording can be determined as a witness and child understand what judge decided and the most important thing Is that Child friendly language is used it means that language which child understand easily that language should be taken in court during proceeding to make friendly environment with children. From European Council Guideline India also take or make a guideline to protect children and give friendly environment and best interest of the children. It also is considered that guideline Before proceeding, During the proceeding, After proceedings.

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Concern domestic law in children exploitation issue in India:-

Through the Immoral Trafficking Prevention Act (ITPA), The Indian government penalizes trafficking for commercial sexual exploitation, with a prescribed penalty of 7 years' to life imprisonment.

India also prohibits bonded and forced labour through:
Bonded labour Abolition Act
Child labour act
Juvenile justice act

Section 366(A) and 372 of the Indian penal code, prohibits kidnapping and selling minors into prostitution respectively. The penalty under this provision is a maximum of ten years imprisonment and a fine.

Trafficking in human beings or a person is prohibited under the constitution of India under ARTICLE 23(1) of the Indian constitution.

Protection of children under the protection of children from sexual offences (POCSO) ACT. 2012 which came into effect from 14th November 2012 is a special law to protect the children from sexual abuse and exploitation.

Under the Immoral Trafficking Prevention Act (ITPA) and different Sections of the Indian Penal Code (IPC) in 2016, there were 15,379 victims whose cases were registered. In which,

633 persons were victims of bonded labour,

384 children were victims of child labour,

48 children were victims of child pornography

Another 1, 11,569 children were reported missing and untraced as of 2016. This is a high probability that all these victims might have been trafficked and/or exploited.

Since covering the above-mentioned laws and act why the problem of child trafficking is increasing rapidly in India...??

Lack of FIR:- the police officer across India refuse to register first information report (FIR) because they are not interested and they assume that once the child is lost he/she can't be revealed now, and report for missing children may affect their station performance.

Lack of proper government policies: - there is an absence of a mechanism to monitor these illegal activities besides apathy from the people who employ this helpless lot as domestic workers cannot escape scrutiny.

Delay in the decision of the court: - Out of a total 20,015 cases (17,612 cases from the previous year and 2,403 cases in 2016) that were the courts in 2016, Trial was completed in merely 3 per cent of cases (587 cases). Of the total cases in which trials were completed, convictions have been made in only 163 cases (28%). The rate of conviction out of the total cases under trial in 2016 is a mere 0.8%(163 out of 20,015 cases).

Pendency cases in courts: - In 2016 97% of trafficking cases were pending in courts.

Conclusion and Suggestion

Human Trafficking is a big problem that affects most countries worldwide. Many say Human Trafficking is the modern-day slave trade, yet so little is done in an effort to stop this problem. 70% of human trafficking victims consist of young girls that are taken from their countries and imported to other countries where they can be sold into prostitution. We can work together to stop this by the following measures:

Aadhar card mandatory for children: Through aadhar card, we trace the lost child through their biometric by locating his last location from the place where he is lost. When the other place police station find the lost child it would be easy for them to locate the habitat location

Making social media Active: Making social media more active in spreading the concern of child trafficking problems and the regarding measures which should be taken.

The central authority should be established in each state: Central authority establishes in each state who directly look out this matter when there is a problem in the registration of FIR in the police station. Central authority contact other authorities of state directly when there is missing of a child

Immediate registration of FIR : Police station should register the case immediately and should not wait for 24 hours.

CHILD PROSTITUTION : FROM TINY HANDS TO STOLEN DREAMS :

“Children are better to starve, than forced into prostitution.” – M.T. Panchal

Prostitution is the profession embodied within the roots of our country for centuries. It is a business involving girls, woman, men, transgender and even children, be it girls or boys where they are sexually wrung and mistreated in exchange of monetary terms. Child Prostitution is the sexual oppression and abuse of a minor who is below the legit age of giving approval, into such a profession in consideration of payment of such collaboration. According to the United Nations Convention of rights of children, 1990, the definition of Child prostitution is, “*Child Prostitution is the sexual exploitation of the child below 18 years of the age for remuneration in cash or kind.*”

CAUSES

It is a scandalous evil of our country. The involvement of children in such a profession can be either voluntarily or involuntarily. Some of the reasons which lead to Prostitution- Poverty is in the roots of our country which has drained the country in the pits of downfall. People who are unemployed and can't afford basic amenities of leading a sustainable life. Lack of sex-related education, Due to ill-treatment did by guardians, Bad company, Financial support to family or due to debts, When there is someone in the family enrolled in this profession, Social procedures, To earn quick and easy money, The desire to adopting new technologies and fashion, Early marriage or early desertion by the spouse

For these reasons, they join this line or drag their children into this. Child prostitution is nothing but a form of sexual manipulation of children. It is also a model of sex trafficking where a child is first, hijacked and then is deceived into sex dealings. It is a mould of survival sex. They are compelled by social agents or bodies into such circumstances in which the adult exploit them sexually. It is a stage followed by prior such sexual abuses, sometimes even at the child's own home. This is somewhat related to child pornography.

This is mainly undertaken in the brothels, bars, homes, clubs, streets or particular areas. Delhi, Mumbai and Kolkata are the hubs for illegal brothels for such businesses.

CONSEQUENCES

Such activities have psychological conclusions such as anxiety, anger, sleeplessness, confusion of personality, confidence deficiency etc as well as physical effects. They undergo higher risks of unwanted pregnancy and forced foeticide. They suffer mental sickness, anguish, disturbance, torture, pain, vaginal shredding, post-traumatic stress disorder, assault and violence. The victims of child prostitution due to such effects are exposed to drugs and intoxication of drinks. They also become victims of HIV and AIDS and other forms of infections. Child prostitution doesn't only result in deaths and diseases among children but also infringes their right to life and dignity and their basic human rights. They are compelled to work at unhygienic places, they suffer from poor health, malnutrition, abuses and unhappiness, and because of such reasons, they even attempt or commit suicides.

ORIGIN

It is the oldest profession in this whole world and is within the roots of our country since the time immemorial. These were first seen in the 19th century when the guardians used to sell their young girls into brothels of England. Or they were hijacked and compelled to work in brothels in exchange for remuneration. This system was prevalent as it was an easy option to earn money. This system is now also in operation. But there has been a remarkable increment in the number of girls involved in this. Even the boys are taken into consideration.

STATISTICS

It is a profession practised throughout the world. Majorly it is undertaken in the south of America and Asia.

There are approximately 10 million children who are into such a profession.

Every year almost 1 million children are ordained into such activities.

According to the 1994 research by Human Resource Development, it was revealed that 30% of all the child prostitutes are from six major developed countries- Calcutta, Bombay, Delhi, Madras, Hyderabad and Bangalore.

According to 2013 reports, India has been ranked in the top 5 countries becoming the country with the highest number of child sexual abuses.

LEGAL FRAMEWORK

Under International Law and UN National Convection of children rights, Child prostitution is an illegal implementation. Article 34 of the Indian Constitution says that “*the state shall protect children from sexual exploitation and abuse, including prostitution and involvement in pornography.*” Article 23 of the constitution speaks that, “*prohibition of trafficking in human beings, forced labours and all forms of exploitation.*” Article 39(e) and (f) talks about the protection of children from abuses and providing them with opportunities to develop. Section 372 and 373 of the Indian Penal Code, 1860 states selling and buying minor girls for prostitution a criminal offence. There are many such constitutional enactments initiated to prohibit such activities against children such as The Immoral Traffic (suspension) Act, 1956 and The Immoral Traffic (Prevention) Act, 1986, The Juvenile Justice Act 2000, Indecent Representation of Women Act, 1986 etc.

SUGGESTION

As compared with the prior conditions, such incidents and crimes have increased. Several critical measures should be adapted to get rid of such activities. Such as-

Education is the key to development. It is important at every level of a human being. Sex education also should be imparted at every schools and college.

Recognizing gestures at public places. There are chances you might pass a victim and not realize. The moment you raise any suspicion, you should take initiative.

Report every suspicion raised.

Awareness should be raised everywhere among the family, friends, schools and colleges regarding these circumstances. They should not avoid the situation but should report such crimes.

Take the necessary exertions regarding this issue.

We should speak about the issue. Articles relating to such issues should be penned down to newspaper editors. Such crimes should be reported. Anti-trafficking efforts should be initiated. NGOs of such concern should be initiated and supported. The victims undergoing such circumstances should raise their voice instead of tolerating. The person who endures exploitation under duress is as bad as the per-

Caste and discrimination- Perpetuation of hegemony in the context of child labour: Ishan Bhatnagar, NLU Delhi.



Despite almost seventy years of the ushering of a revolutionary constitutional framework driven in part by the genius of a man who called for the annihilation of caste, we find that the caste system continues to operate in ways, obvious and hidden, in the Indian social context. Historically, the system of organized caste-based discrimination has been responsible for the rampant inflicting of atrocities and systematic exclusion of certain sections of the population. With the advent of colonial rule, existing systems of hierarchy and hegemony were codified into the personal laws, which remained largely Brahmanical. In the context of the 21st India, caste has gradually transitioned into other forms of privilege, most notably those of education and employment. The benefits of modernization, far from uplifting everyone, have concretized the existing power structures and have also rendered a layer of legitimacy to them.

In the same vein, caste comes to bear upon the prospects and opportunities of an individual's life, right from childhood. It plays a factor in whether the child will be made to perform child labour, as also on the kind of labour she is forced to undertake. The International Dalit Solidarity Network (ISDN) puts the issues of caste and injustice into startling focus through analytical articles on the Indian Committee on the Netherlands reports on child slavery in India's yarn industry and cotton textile business: child slavery is found in more than 90% of the spinning mills in South India. Most of the children enslaved are from marginalized communities. Children are 'enslaved' by employers who withhold their wages and lock them up in company-controlled hostels. As regards the cottonseed production industry, about half a million children, most of which are from marginalized backgrounds work long hours, are not sent to school and are subjected to hazardous work and harmful chemicals.

These reports speak to the systematic way in which children from backward castes and other minorities are oppressed, enslaved, and denied an ordinary childhood. The children of manual scavengers are perhaps the most affected. They are made to perform menial tasks like cleaning gutters, cleaning septic tanks and are also often forced to collect leftovers for mere survival. We see that their exclusion and ostracization do not end even when such children are sent to school, wherein the discrimination undermines all aspects of their education and often causes them to drop out of school altogether. A survey by Navsarjan trust, titled *Voices of the Children of Manual Scavenger*, reveals rampant discriminatory practices meted out to such children in government schools. Here, we see that by forcing these children to collect excrements and clean septic tanks, the agency of a progressive state acts in a manner most regressive to uphold and perpetuate an inhuman status quo over the larger equitable goals that the state has been vested with.

This raises larger questions about the roles of the law and the state in transforming the social fabric, as also their role in perpetuating and legitimizing hegemony. It also reveals the failings of an education system that promises access to opportunity but systematically deprives a significant section of the population of the same.



If we are to reach real peace in this world, we shall have to begin with children; and if they will grow up in their natural innocence, we won't have to struggle. – Mahatma Gandhi

Manual scavenging has been called the worst surviving forms of untouchability. And dragging children in such inhumane practice is most dangerous. It curtails not only their socio-political rights but also diminishes their prospects to grow. Despite a dozen set of laws, both national and international, in favour of child rights and against manual scavenging, does not forbid the plight of child rag pickers and manual scavengers. It leads to severe violation of child rights.

Causes behind employing children in manual Scavenging

Poverty and illiteracy are one of the most pressing reason due to which families employ their children in manual scavenging and rag picking so that they can earn extra income. Most of the families who does this belong to SC/ST, who are either oversized or do not have an extra source of livelihood. They do not own land and belong to non-agricultural backgrounds and broken families. Whether they do it willingly or not does not matter. The isolated slums in the periphery of a city find easy access to work near railway tracks. Children of such families are employed as rag pickers and manual scavengers to clean the railway tracks. Firstly, children can be employed at much lower wages than an adult. Secondly, they can be available for at least some hours each day. At a small age, they help their parents at work in cleaning tanks (especially boys) and dry latrines (especially girls). Girls are more frequently taken along due to non-productive capacity at homes and when it is felt that it is less required for them to attend school than boys.

Impact on Childhood and their rights

This inhumane work not only affects their educational rights but deeply impact their psychological state. At a small age, they are forced to face humiliation and discrimination. Many children are found to leave school because their parents are manual scavengers. They have refused to attend school on the account that other children would make fun of them. Those who attend schools, work with their family to make their bread through pitiful money from this inhumane work. The caste-untouchability-based exclusion thus reflects the inability of children to interact freely and productively with others and to take part in the full economic, social and political life of the community when they grow up. Basically, such work is carried out by people from Dalit families from generations to generations. Such occupation is expected to be carried forward by their children as their parents or forefathers do not want to lose their patrons. They have inherited this job from their forefathers and now a younger generation of the family (especially, daughters-in-law, and sons) is helping them in this task. Sometimes children were forced to become rag pickers by the rag purchaser and some time the children choose to become rag pickers by themselves as an independent. And from here the journey of their exploitation, engagement with criminals, drug addiction began, which is neither good for their development and nor for the society where they are living. Children get hurt very often due to bottles and needles and face serious injuries in many cases. Children face seclusion from family, social and school life. They miss the crucial age of development when they wander in the streets. Most of them want to skip work and want to attend school. But those who remain stuck find themselves settled in the occupation after age and see it as their fate and obligation.

Conclusions and Suggestions

The practice of caste-based exclusion and discrimination involves the failure of access and entitlements to children at a small age. They are kept deprived of their basic human rights. It involves what has been described as "living mode exclusion"; exclusion from all kinds of participation which we have seen is not limited to childhood but they carry with themselves as they grow up. participation which we have seen is not limited to childhood but they carry with themselves as they grow up. The life of scavengers and their children can be improved by providing them with good quality education and stringent implementation of laws along with pro-activeness on the part of NGOs and local governments. Large scale sensitization needs to come to society towards the children of Dalit communities. They should forego the older notion that they bear with the caste lineage and should refrain their younger generations from this occupation.

As Oxfam states, "Education is the best escape route from a life of poverty. Education brings with it improved health, the chance of prosperity, and hope for the future. It opens the door to a life of dignity and independence. It is important for the parents to understand the importance of primary education which is the only way to break the cycle of poverty.



RIGHT TO PLAY: SARTHAK MONGIA

“Play is so integral to childhood that a child who does not have the opportunities to play is cut off from a major portion of childhood.” –Musselwhite

Right to play stand for each and every child having space and an opportunity to play be it in school or in residential areas. Fundamentally a child enjoys his childhood by playing as it is integral to a meaningful and well-rounded childhood. It is our solemn duty to provide children with a quality life. It also plays an integral role in children’s enjoyment of their lives, their health and their development. Well in the 21st century millions of children are denied the right to play The privilege to play and casual entertainment, for every child under 18 years of age, is in Article 31 of the UN Convention on the Rights of the Child which got ratified by the Indian government in 1992. The legislature has an obligation under this to protect and promote playing opportunities for all kids and youngsters. Although even after ratification no such step is taken by the government of India till the Indian judiciary recognized the Right to play in the recent judgment of 2015 by Delhi High Court and it imposed certain duties on State commission for protection of child rights and to take care of all the parks maintained by local authorities so the children’s right to play is not violated. Children should play and the rest of us should ensure that their right to play is realised. This is especially relevant in a young country such as India where more than half of the country’s population is below the age of 25. We have one of the highest levels of malnutrition in the world and we are the third most obese nation in the world. Regardless, all the awareness there is still a paucity of parks and grounds, parks are poorly maintained, schools do not encourage to play or indulge in extracurricular activities but lay more emphasis on education. Due to this tight curriculum, obesity is faced by the youth.

Importance of playing: Playing is essential for a child's physical and mental health.; Relieves stress and mental health problem is considered as a serious problem emerging in this new world; Improves the functioning of the brain; Stimulate the mind and boost creativity; Keeps us feeling young and energetic.; Playing helps us develop and improve our social skills.; Sports can be taken as a career option; It can be useful for dealing with obesity; Playing teaches cooperation with others.

Things to do for making the right to play possible: There should be a concerned authority which can supervise the working of local authorities in maintaining the parks and in making desired changes in the curriculum of schools by including various sports and extracurricular activities and also in organising various campaigns to promote and make people aware about the same on the national level. National Commission for Protection of Child Rights can be allotted this work and the jurisdiction for the same in State can be given to the State Commission. Children irrespective of their age, culture, social or economic background, they need time and space to play freely and confidently with friends and where they feel safe. It should not discriminate amongst any group of children whatsoever and include all in its provisions. The parents should understand the importance of playing and let their children play. Provisions should help in making the society aware of the benefits of playing which not only helps the child relax but also is one of the building blocks that help in their growth. Children should be left free to play in their local residential areas, they also should have equal right to enjoy the public place, parks, city centre etc and it should be made accessible for them to move around safely and play freely. Children need time and space to play at school but the tight schedule of school nowadays does not leave any time for them to do so, academic lectures and tedious homework takes up all their time. Reason being that the schools lay emphasis mainly on academics and do not invest much on sports ground and equipment. The concerned authority should ensure that children get enough time to indulge themselves in extracurricular activities in order to develop themselves overall.

Right to play has to be an obligation not only on government but also on corporate, private and non-governmental sectors. It will also be a social glue in this society and can be turned into reality if the government and other stakeholders come together and create conditions by improving public health and infrastructure at ground level

COMPACT STEP IN RESTORING CULTURAL NORMALCY IN THE LIVES OF REFUGEE CHILDREN– TUSHAR BHEL

“Having control over who touches your body, and how, lies at the core of human dignity and autonomy” – Justice Major, In R. v. Ewanchuk



Seema, Lakshmi and Chanda are all terror-stricken girls, ageing between 6-7 years. They were brought to a brothel in Kolkata from Bangladesh and Nepal. They were allowed to leave, not because they were rescued but because they fell into the insidious circle of HIV and with no treatment, they were nonetheless, dying. They are a victim of the vicious circle of peddling human flesh. In fact, perplexity arises when they live life in servitude where all they can hope for, is a safe haven. The *Universal Declaration of Human Rights* ('UDHR') guarantees every human being, a right to Nationality where there can be no deprivation or denial to change his Nationality. Trouble arose when the Economic and Social Council ('ECOSOC') was tackling the situation of 'Stateless Persons' when it clashed with the Refugee Convention of 1951. It was sensed, that special treatment needs to be accorded on Statelessness and owing to the conference of Plenipotentiaries, *The Convention relating to Status of Stateless Persons* was adopted in 1954. Even today, statelessness is a huge problem in South Asia and the situation aggravates when a stateless person falls victim to human trafficking. If one dates back to the early 1980s, the focus of the United Nations ('UN') got channelized towards the surreptitious and insidious practice of human trafficking which had assumed an unparalleled and frightening dimension resulting in grave violation of human rights, especially women and children. It was in 1949 when the *Convention for the Suppression of Traffic in Person and the Exploitation of Others* paved the way to eliminate the 'white slave trade'. Further, in 2000, the *Palermo Protocol to the United Nations Transnational Organised Crime Convention* ('UNTOC') which classified trafficking as an international crime. Even though there is no limit to the standards of practice when it comes to the Nationality of Refugees, yet The Hague Convention of 1930, The 1948 UDHR, The 1954 Convention relating to the Status of Stateless Persons, The 1961 Convention on the Reduction of Statelessness, The 1989 Convention on the Rights of Child fall short, because these poor souls are denied their fundamental rights.

REFUGEE CHILDREN: RIGHTS UNKNOWN OR CELEBRATED?

About 15 years ago, Professor Goodwin-Gill called out a "total realignment of protection' for child refugees while contemplating *the 1989 Convention on the Rights of the Child* ('CRC'). Similarly, Professor Jane McAdam applauded Article 3 of the CRC which adds a cushion to the function of the Refugee Convention. The role of International Treaties is crucial as they set norms. The CRC's major novelty, the 'Triangle of Rights' and the 'Best Interests' rule is the most comprehensive innovation because even though CRC does not cover refugee children, it restricts discrimination of all forms, grant legal rights to every person below the age of 18 and creates a special category of protected children by virtue of Article 3.

CRC also holds utmost power when it comes to Refugee children because even if a State has not ratified the Refugee Convention, but is a party to the CRC, then it may be applied for preliminary protection to Refugee children and for United Nations High Commissioner for Refugees ('UNHCR') to advocate its adherence.

COMBATING VULNERABILITY OF REFUGEE CHILDREN TO HUMAN TRAFFICKING: INTERNATIONAL PERSPECTIVE

The office of the United Nations High Commissioner for Human Rights has always given primary consideration to the 'best interests' of the child in case of his parent's deportation, detention or return. This can also be inferred from various reports of the Special Rapporteur on rights of migrants where the efforts of UNHCR are clearly visible when it comes to family reunification. In case, the child does not qualify for the Refugee status, the office calls for an immediate practical assessment in the best interest of the child.

INDIAN YARDSTICK

Trafficking being prohibited in India, still holds a taboo was due to social stigma and fear of mortification, people remain desensitized. In India, trafficking has been labelled both directly and indirectly in part III over Fundamental Rights and Part IV over Directive Principles of State Policy, however, they do not mention 'trafficking', but exploitation which is one of the elements of trafficking. The Immoral Traffic Prevention Act, 1956 is the only legislation which concretely addresses trafficking but still confuses with prostitution . Furthermore, with major gaps in prosecution, missing gender sensitivity and no uniform definition of a child, there are many reasons to believe that trafficking in India, is not considered as organized crime and with a very few ratifications and protocols, there is not much of a belief while advocating trafficking cases.

TRAFFICKING OF PERSONS (PREVENTION, PROTECTION & REHABILITATION) BILL, 2018

The UNTOC along with its protocols has played a vital role in revising anti-trafficking legislations of many nations. By introducing this bill, the Government of India aims to become a global leader to fight human trafficking. However, the future of the bill is unforeseen since its text already confuses human trafficking with migrant smuggling. It is also disconcerting the actual context of global impacts for refugee children and migrants.

RESTORING CULTURAL NORMALCY

The cognitive comfort of refugee children can be assured most effectively by restoring the lost community life. A clear line needs to be drawn between the child victim and the trafficker. Refugee children who have been rescued should be given efficient rehabilitation in a safe atmosphere keeping in mind, gender sensitivity. Anti-trafficking training must be given with full enthusiasm and effective monitoring along with strengthened community initiatives. While it is visible that Nations have made a little progress towards the fight for child trafficking, following loops need to be filled with utmost priority.

Ensuring a voluntary return to one's country of origin and not resorting to temporary asylums and resettlements in a third nation.

Ensuring an optimum degree of fragmentation on the eagerness of the host Government to allow refugee children to resolve their own activities, i.e. refugee participation.

People-oriented planning, i.e. understanding demographic profiles of refugee children and regulating the background within which refugees manage their everyday life.

Communicating traditional dance, music and other forms of art and sports which play an important role in representing culture.

Renewing and strengthening the practice of rituals and religion.

Enforcing the gamut of cooperation strategies and avoiding coercive practices.

Retaining the identity of children by maintaining their own mother tongue.

Tracing the parents of unaccompanied children to reunify their families.

Psychosocial well-being is of utmost necessity as far as refugee children are concerned and appropriate remedial assistance is needed to ensure full recovery of their poor soul. The transition from full dependency to no dependency is a slow and a developing phase in their life which calls for high self-esteem, identity and security in order to make them adapt to society. The after effects of this disruption in their lives can be highly serious and daunting, depriving them of their primary role model, identity and their emotional development. Therefore, it needs to be understood that the effects of this social upheaval caused by their forced movement affect the coherence of their culture and social values need to be kept intact for their very own identity and emotional well-being.

“Culture must not be accorded the status of a metanorm which trumps rights.” – Bhaskar kumar (NLSIU, Bangalore)



The legal approach towards cultural practice in the name of preserving cultural pluralism has so far been incongruence within the relevant social understandings of the cultures within which they are practised. The respective morality of these practices has been left for the sole discretion of dominant and prevalent notion of a particular community. In this course, the gravest injury has been sustained by two groups, women and children who are socially vulnerable in the current institutional setup. It is a fairly universally acknowledged fact that young people represent a subservient class and are comparatively powerless and that concerns about the welfare and discipline of young persons have plagued societies for centuries. Even Socrates is reported to have commented on the plight of young people. Children were seldom mentioned in discussions of rights prior to the twentieth century. As indicated already, rights were generally assumed to be an attribute of rational adults. Legal scholarship has long been entertaining the principle that a culture can only be judged by endogenous value judgment and the moral principles which permeate from the outside world has no validity or admissibility. Paradoxically this doctrine to preserve cultural autonomy made morality a slave to custom. There was still a gulf between the civil and political rights asserted for adults and the social welfare and protection rights granted to children. There were also no mechanisms for monitoring compliance with any of these Declarations of the Rights of the Child, meaning that they were little more than statements of good intent. Even if we look at the constitution it nowhere mentions the rights to children specifically.

John Stuart Mill in his seminal work, *On Liberty*, observed, “Do we wish the "ought" to relinquish any transcendental power it may have to critique the "is"?” Is it acceptable that a practised must not be scrutinized under constitutional framework it is because it has been sanctioned by the dominant group which is disregarding the gross human right violation which has somehow acquired a universal conception? The most gruelling and perturbing examples of cultural annihilation of child rights are child marriages and female genital mutilation. Culture by its very nature constrains thus says Janet A. Haley. The contention is how long should we allow the continuance of exploitative social institutions like patriarchy and others in the garb of cultural and group autonomy. And when it pertains to the matter of child rights violations in the name of culture the situation is more morbid as this section of society is so vulnerable and fragile that it cannot even resist to the tyrannies of culture and eventually this injustice left an indelible mark on the psyche of children for a lifetime.

In this essay in the context of recent case in the Supreme Court pertaining to the Female genital mutilation, the authors will argue that customary practices are wreaking havoc on child rights and the legal system be more considerate of their plight and reject the notion of absolute immunity to a culture in case of gross human rights violation especially in the cases of child rights violation as this section of society is most vulnerable.

Before discussing the issue of the intersection of custom and child rights, it is pertinent to understand the case of Female Genital Mutilation. The practice of genital mutilation, commonly known as circumcision, is highly prevalent among many Muslim communities in India. Such mutilation is performed on both males and females, mostly between the age of 5 and 10. Genital mutilation has severe health consequences both physical and mental and also, the objective of both is different and FGM is sought to control the sexuality of women and girls. Regarded as a part of religious practice by such communities, these activities have larger implications on fundamental rights of children. Issue of FGM gained prominence after public interest litigation (PIL) seeking a ban on the same was filed in the Supreme court.

FGM involves complete or partial removal of the genitalia of female and comprises all other injuries in furtherance of the same, such activity being performed in an unprofessional manner by old women of the community, commonly known as *Dai*. Mostly carried out on girls between the age of 5-10, it is sometimes performed even on married and adult women if they have not undergone it at an early age. According to a joint statement by the United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), and the World Health Organization (WHO), FGM has four classifications:

Type 1: It involves removal of the clitoral hood, with or without the removal of all or part of the clitoris.

Type 2: It involves removal of the clitoris with the total or partial excision of the *labia minora*.

Type 3: It involves removal of all or part of the *labia minora* or/and *labia majora*. This is followed by the stitching of the vagina to narrow its opening. This practice is also referred to as infibulation.

Type 4: This type is most harmful of all. It involves a dangerous non-medical procedure to the female genitalia which includes piercing and pricking of the clitoris, stretching of the clitoris, cauterization, introducing a corrosive substance into the vagina.

II.I: IMPACT ON THE HEALTH AND PSYCHOLOGICAL WELL-BEING OF THE GIRL-CHILD

FGM, often carried out in unhygienic and clandestine manner without anaesthesia, poses a great threat to the health of the individual and also involves risk to the life, if some grave infection takes place. It involves both short-term and long-term health risks. Short-term risks involve swelling and inflammation in the genital area, urinary problems, excessive bleeding and in some severe cases, even death. This also has severe consequences on their health: pain during menstruation and painful urination. Long-term consequences involve recurring urinary tract infections, chronic genital infections, painful sexual intercourse, complications during pregnancy, prenatal risks, and complications during pregnancy.

Though it is a singular incident in the life of the victim and the victim might not face any such abuse of physical violence in future, yet FGM has a long-term impact on her in the form of Post-Traumatic Stress Disorder (PTSD). FGM disables woman permanently from her right to sexual pleasure throughout her life and the trauma haunts her for her entire life. She can also be identified as a disabled person depending upon the extent of FGM. S. 2(s) of The Rights of Persons with Disabilities Act, 2016 defines 'person with disability' as:

“a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.”

Long-term mental impairment caused due to experiences of FGM may lead an individual to live with the stigma and hence adversely affect her interaction with society. Speaking legally, some victims of the FGM may be identified as 'person with disability'. Thus, FGM affects not only the health of girls and women but also their social development.

As this practice ingeniously attacks the bodily integrity of a child it is in strict violation of article 21 of the constitution of India. The doctrine of bodily integrity safeguards the physical parameters of a person and according to Justice Blackmun, the right to bodily integrity is the cornerstone of all other liberties. Thomas Jefferson asserts that the true basis of any democratic government "is the equal rights of every citizen, in his person and property and in their management". American constitutional law and common law principles have incorporated the concept of bodily integrity in a wide array of legal principles as an inherent right of individuals which ensures an individual the physical liberty. In the famous case of *Union Pac. Ry. v. Botsford*, the US Supreme Court observed that-

"No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by the clear and unquestionable authority of law."

The notion that every individual must be protected from the non-consensual physical intrusion is deeply embedded in Anglo-American jurisprudence and since India adopted the legal system based on Anglo-American jurisprudence, it also follows the same principles and philosophies. The liberty granted to the citizens is not just a series of rights or privileges guaranteed by the state to individuals but a rational continuum which encompasses the freedom from all substantial and arbitrary impositions and purposeless restraints. As an exclusive right, the right to bodily integrity is both *jus in personam* and *jus in rem* and it imposes strict duties of non-interference, and infringement of the right to bodily integrity is actionable per se. The "*right to have one's own body whole and intact*" and the "*right to be free from physical interference*" follow from the right to bodily integrity, but such rights-claims do not capture the full legal form of the right to bodily integrity. The right to bodily integrity is the right to exclude all others from the body, which enables a person to have his or her body whole and intact and free from physical interference. This is the extension of personal autonomy guaranteed under article 21 of the constitution of India. In *Puttaswamy* case the Supreme Court of India held that Privacy at a subjective level is a reflection of those areas where an individual desire to be left alone. On an objective plane, privacy is defined by those constitutional values which shape the content of the protected zone where the individual ought to be left alone. (*Puttaswamy plurality*, paragraph 169)

The defenders of this practice argue the cultural autonomy and consider any claim over their cultural practice as a curtailment of their cultural autonomy. To begin with, it is pertinent to understand the root of cultural rights and the answer to the question as to why in a constitutional democracy a minority community is protected by the constitution. Now when it comes to the question of rights of minority culture, more or less these are the special rights with the liberal commitment to individual autonomy. The rights to minority cultures ensure the protection of certain cultural uniqueness from the encroachment by political and economic decisions by the majority culture.

"Liberalism is committed to (perhaps even defined by) the view that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community should they come to see them as no longer worthy of their allegiance." A liberal theory wouldn't hesitate to accept special rights for minority culture against a majority community so as to ensure equality of circumstances between them but special rights of culture against its own members cannot be justified at all. In the case of former, it promotes and protects the autonomy of minors and in the latter case, it just restricts. In the course of time, there has been a shift in the ethical balance between individual and group in the direction of an individual. The liberal theory expounds that every individual must have a right to exit and this is completely different from coercively imposing liberalism on minority groups but it provides an individual with the option to make an informed choice on the way he wants to conduct his life.

While dealing with the question of child rights and culture the courts must always look for the best interests of children. The best interests of the child should be the primary consideration, if not the paramount consideration. We cannot disagree to the norm set by article 3(1) of UNCRC: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The reconciliation of the best interests principle with cultural norms is a major concern, perhaps more so now in our post 9/11 world than was the case in 1989. We are much more sensitive to cultural diversity and arguably more tolerant of it than we were when the principle was being formulated. But even in 1989 there was inserted into the Preamble of the Convention the need to take "due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child".

In words of Ncube it is demand of time that we must recognize the normative universality of the conception of child rights while defining and formulating them while remaining within the autonomous legal framework for the cultural rights giving ample space to the existent diverse and varied cultural and traditional conceptions of childhood, its role, its rights and obligations. According to him-

in the African cultural context, childhood is not perceived and conceptualized in terms of age but in terms of inter-generational obligations of support and reciprocity. In this sense, an African "child" is often always a "child" in relation to his or her parents who expect and are traditionally entitled to all forms of support in times of need and in old age'.

In the context of culture and rights, following the same line of argument Justice DY Chandrachud in *Indian Young Lawyers Association v. State of Kerala* observed that –

"Custom, usages and personal law have a significant impact on the civil status of individuals. Those activities that are inherently connected with the civil status of individuals cannot be granted constitutional immunity merely because they may have some associational features which have a religious nature. To immunize them from constitutional scrutiny is to deny the primacy of the Constitution."

While acknowledging the concerns of minority group over protection of cultural rights the historical injustices pervading in the guise of culture cannot be sanctioned by constitutional morality (here we can draw an analogy with the universality of child rights) Justice DY Chandrachud was of same view in *Indian Young Lawyers Association v. State of Kerala* where he observed that

"In the dialogue between constitutional freedoms, rights are not isolated silos. In infusing each other with substantive content, they provide a cohesion and unity which militates against practices that depart from the values that underlie the Constitution –

justice, liberty, equality and fraternity. Substantive notions of equality require the recognition of and remedies for historical discrimination which has pervaded certain identities. Such a notion focuses on not only distributive questions but on the structures of oppression and domination which exclude these identities from participation in an equal life." This para is quite important in articulating the point of universality of child rights in the context of cultural practices.

At this point, it is important to take into account the transformative character of the Constitution. As Granville Austin notes, "The Indian Constitution is a live document in a society rapidly changing and almost frenetically political. The touchstone for public and many private affairs, the Constitution is employed daily, if not hourly, by citizens in pursuit of their personal interests or in their desire to serve the public good." Describing the Constitution as a 'social revolutionary document' with 'modernizing force', Granville Austin invokes the 'constitutional morality' enshrined under Article 25 of the Constitution to argue that rights must take the upper hand. The spirit of transformative constitutionalism can only be realized when the practices which reflect the unjust notions and prejudices of past would be censured by the court in order to achieve a society based on the conception of human dignity and liberty. Among the most notable transformations is the extension of the "classical" western notions of rights. The Indian Constitution, inaugurally, extends the notion of rights beyond the state to civil society. It outlaws practices based on the ground of "untouchability"; forbids and penalizes practices of forced and bonded labour and markets for trafficking in human beings, and provides a first contemporary example of empowering state action in aid of human rights against formations of cruelty in civil society. The Indian Constitution, in its progressive development, becomes the vehicle of empowerment of the untouchables and indigenous peoples. Culture should never be an enslaving institution abrogating basic fundamental rights of children which are universal in nature.

While striking down section 377 of IPC the Supreme Court emphasized the importance of the transformative character of the constitution. *"There is a constant need to transform the constitutional idealism into reality by fostering respect for human rights, promoting inclusion of pluralism, bringing harmony, that is, unity amongst diversity, abandoning the idea of alienation or some unacceptable social notions built on medieval egos and establishing the cult of egalitarian liberalism founded on reasonable principles that can withstand scrutiny."*

In this context, it is even more important to protect children who are socially vulnerable and to secure to the child rights. Founding doctrines of our constitution must be unearthed to overcome the menace of suppression of rights by superimposing customs. This concept of constitutional morality was laid down by the Supreme Court in *Manoj Narula v. Union of India*. Elaborating the concept of constitutional morality, Justice DY Chandrachud in *Govt. of NCT of Delhi v. Union of India* highlighted the need to identify incoherent values by quoting Bhargava's work titled "Politics and Ethics of the Indian Constitution":

"There is.... a pressing need to excavate the moral values embedded in the Constitution, to bring out their connections, and to identify the coherent or not-so-coherent ethical worldviews within it."

These ideas of the constitutional mandate that child rights must be protected, and in the case of FGM, intrusion from the bodily violation. Justice DY Chandrachud had urged this protection, *"Women have a constitutional entitlement that their biological processes must be free from social and religious practices."*

To this end, constitutional rights are often violated not at the hand of the State but private individuals. The Constitution not only provides for negative rights, i.e. freedom from State intrusion, it also provides for certain obligatory positive duty for the State. In such a situation where child rights are put at stake and often violated by individuals and groups in the name of custom and religious practice. Often, our existing legal framework does not effectively provide protection given the religious element involved and in the case of FGM, they do not protect the girl child. In such a situation, it is the duty of the State to step for the protection of victims and make social welfare legislation banning such practice. Flavia Agnes posits that it is important to *"weave women's rights into legal theory"* but it is the need of the hour that the Supreme Court bans the practice of FGM preserve the fundamental rights of children and obviously women because the practice inflicts grave physical and mental torture on them. Culture must not be a defence when taking away the rights of the most vulnerable section of society who could not even raise voice against the oppression and exploitation inflicted on them.



WHEN GUARDIAN ANGELS TURN DEMONS: PARENTAL ABUSE AND NEGLECT –

ASWATHY SUKUMARAN ETTUNGAPADY

Family is supposed to be our safe haven. Very often, it's the place where we find the deepest heartache.”-

Family is the first social association of a child. It is the institution that shapes the character and development of a child. For every other person in this world, his family or home must be the safest place to be. As some thinker has beautifully put it, home is where the heart is. In the words of Charles Dickens, “Home is a name, a word, it is a strong one; stronger than magician ever spoke, or spirit ever answered to, in the strongest conjuration.” But unfortunately for many poor souls, home is a place of terror.

In a month's time, there were three cases of child death reported in the state of Kerala. On 6th April, a 7-year boy who was brutally attacked by his mother's partner died. On 19th April, a 3-year-old boy died after being allegedly tortured by his parents who are migrant labourers in Kerala. On 29th April, a toddler was strangled to death by her mother. All three children died in their own homes, in the hands of their own guardians. But these are no longer shocking and dreadful news to the general public because we are very much used to these stories as over the years there have been many such deadly incidents reported across the country, where parents and guardians turn out to be the assassins of their own children. The shocking stories of abuse, that children face at their own homes from the hands of their parents and relatives, those who are meant to protect them, seldom come out in public. Many such stories, that manage to come out are rarely followed properly.

The 2014 UNICEF Report on child protection provides that globally 83 per cent of children are emotionally abused by parents. 2 out of 3 children face violent physical punishments at home. The Ministry of Women and Child Development in 2007 reported that two out of every three children in India faced one or the other form of physical abuse. Additionally, out of those children physically abused in family situations, 88.6 per cent were physically abused by parents. Every second child was emotionally abused, and 83 per cent of the surveyed children reported that this abuse took place at the hands of their parents. Children face multiple vulnerabilities in this world but the saddest part is that they are not even safe in their own homes.

Children in India are hugely dependent on their parents and guardians. Indian parents have always had a unique style of parenting. They are always known to take extreme measures to tame their children. They are authoritarian by nature and frequently use punishment. They either have high expectations of their children or nothing at all. The line of communication is also generally one way i.e. from the parent to child. Parental abuse is alike for both rich and poor in this country. Indian households have seen it all, parent and guardians turning sexual predators, inhuman and violent discipline practices, competitive parents torturing emotionally and mentally and children killed mercilessly by their own parents under alcoholism, or drug addiction or for their selfish reasons. Many of these cases go unreported.

Parents have a right over their own children but even the law states that the right must be exercised in the best interest of the child and this right cannot be used to justify the exploitation and torturing that they inflict upon children.

Our society currently faces a cultural and ethical threat. The values of our society have stooped to new levels. Parents harm their own progeny and sometimes even end up killing them. In the words of Agatha Christie, “*A mother's love for her child is like nothing else in the world. It knows no law no pity*”. Certainly, this cannot be said to be true in the case of some mothers in this epoch.

Normally people do not suspect that children would be facing any abuse at their homes because it is a universally accepted fact that parent-child relationship is the most natural and unique bond, that nurtures the physical, emotional, and social development of the child and for every child home is the safest place in the world second only to a mother's womb. It's a bond that every human being experience, enjoy and nurture. The surreal relationship once described by parents and their children has also changed. It is not shocking anymore when someone like a father or uncle sexually exploit a child or when a parent murder their child for all selfish reasons or starve their kid to death or beat them up to death. Children face all types of physical abuse, sexual abuse, emotional abuse and neglect in families. Many children are victims of sexual abuse in the hands of their father or other close relatives for years. In 2016, the National Crime Records Bureau also spoke about the relationship between victims and accused in rape cases. In the deepest villages of our country young children are victims of child marriages or sold for prostitution or bonded labour by their own parents either because they do not have the economic stability to maintain them or for money.

Whenever a child gets punished physically for misbehaviour or for his incapacity to follow an order of the parent, the young mind gets tampered with. At a very young age, he/she believes that the world is for the mighty and powerful. The mind of a child develops at a very young age. Studies have shown that children who suffer abuse at homes have behavioural defects. The result of parental abuse and neglect can range from the death of the child to long-lasting physical and psychological trauma. Post-traumatic stress disorder, alcoholism, drug addiction, depression, suicide, panic disorders are some of the outcomes seen in child victims. Physical violence and mental stress received at an early age leave life-long deep scars on the mind of the child thus jeopardizing the entire adulthood of the then child. Most of the reasons for suicide among young Indian children are the result of hostile families and emotional pressure on them.

One of the most difficult aspects of this problem is that cases of parental abuse though happening in many households do not come out that often unless something grave occurs. Due to the relationship of the offender with respect to that of the victim these offences are difficult to track in the first place. Due to fear and the trauma the victims suffer for years.

The Constitution of India through its various provisions places a high priority on the safety and protection of children. India is also a signatory to many International conventions on the rights of children. There are a number of laws passed like the Juvenile Justice Act, 2015 and the Protection of Children from Sexual Offences Act, 2012, for the welfare and protection of children. But unfortunately, the effectiveness of these laws is questioned when the beneficiaries of these laws are ignorant of their rights.

The JJ Act, 2015 provides for securing the interests of the child in need of care and protection. Subsection 2(d) (ii) provides that a child who resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person, then such a child is a child in need of care and protection.

If any person having the actual charge of, control of, control over, a juvenile or the child, assaults, abandon, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in any manner likely to cause such juvenile or the child unnecessary mental or physical suffering, he shall be punishable with imprisonment up to six months, or fine or both.

The Act empowers the State governments to constitute for every district or group of districts one or more Child Welfare Committees for exercising the powers and discharge the duties in relation to the child in need of care and protection under the Act. The Committee has the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights. The Act also provides for the establishment of Children's home for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. Shelter Homes are also set up under the Act to function as drop-in-centres for the children in the need of urgent support.

The POCSO Act, 2012 for the first time identifies the position of the offender to the victim such as when the offender is a relative of the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with the parent of the child, or who are living in the same or shared household with the child.

The National Commission for Protection of Child Rights (NCPCR) was constituted by the Government of India, Ministry of Women & Child Development as a statutory body in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, to protect, promote and defend child rights in the country. It looks into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with the law, juveniles, children without family and children of prisoners and recommends appropriate remedial measures

Apart from these statutory remedies, at a situation of emergency, a child in need can contact Childline for support and protection. Childline number 1098 is a 24-hour toll-free helpline number which gives hopes to those children who face abuse or exploitation.

Childline is a platform bringing together the Ministry of Women & Child Development, Government of India, Department of Telecommunications, street and community youth, non-profit organisations, academic institutions, the corporate sector and concerned individuals. Any child who faces abuse, emotional distress or becomes a victim of child marriage, child labour or trafficking or is in need of medical aid or any adult who happens to know about any child who faces any of the above-mentioned hardships can contact the Child helpline for support and protection. Children are helpless beings who are in constant need of assistance. Firstly they are unaware of their rights. Secondly, they do not know how to approach law enforcement agencies. And finally, the violence leaves them traumatized for the rest of their lives. Educating children as well as parents is hence the need of the hour.

Parents and guardians must be educated about healthy parenting and the consequences of their acts while children must be educated about their rights and how they can protect themselves and their peers from possible violence. Law enforcement agencies and other NGOs and child protection workers must be trained and equipped to prevent and decimate this barbarous practice.

Experience in other countries has shown that parental training on child development and non-coercive discipline practices improve child behaviour and prevent the abuse of children and parents. WHO says abuse and violence by parents and caregivers can be prevented by improving access to high-quality pre and post-natal services; providing home visitation services by professional nurses and social workers to families where children are at high risk of maltreatment and providing training for parents on child development, non-violent discipline and problem-solving skills. UNICEF Report suggests that there should be the focus on promoting positive parenting skills and integrating services into the lives of families either through regular home visits or at community-based centres, by nurses, social workers and other trained professionals. Giving parent's knowledge of child-rearing strategies and techniques, as well as economic support, helps mitigate physical abuse.

Only 60 countries have adopted legislation that fully prohibits the use of corporal punishment at home, leaving more than 600 million children under age 5 without full legal protection. This lack of legal prohibitions is a clear sign that violent discipline remains a largely unacknowledged form of violence against children.

The NGOs also have a vital role to play in reporting cases of abuse and preventing and rehabilitating children who are victims of parental abuse. Parents need to be child-rearing strategies and techniques. Parenting needs support and proper guidance and NGOs can assist them. There must be counsellors in every school who can at the earliest identify children suffering at abusive homes and give them emotional as well as legal help.

Lack of awareness among the children about the remedies available against domestic violence and abuse is the major problem. Unfortunately, the education system followed in our schools does not provide enough training for the battles of life. Children end up committing suicide at such a tender age due to the lack of support. The education system of the country has a huge responsibility in shaping the young minds for the long journey and every child must be made aware of their rights so that they can help themselves and their peers at times of peril. They must be given physical and mental training to prevent them from any possible assault. They must know their rights and how to avail them. The Kerala model Student Police Cadet (SPC) initiative has worked its way into giving the students a sense of their rights and has empowered them. State governments shall incorporate this programme in every school so that we can raise informed and vigilant citizens.

Parenting is not an easy job. It is an everyday job. Most people end up being parents not as a matter of choice but by chance. They face a lot of challenges trying to raise a child. They get stress issues and wend wearies on their own children. They end up giving irrational, severe and out of proportion punishments for small mistakes. Usually, most parents act irrationally upon the momentary heat of passion but there are some brutal ones that have no regard for their own blood.

The traditional notions of parenting must change as it creates arrogant, unhealthy minds. It does no good to a child but only damages his understanding of love, pain and society. The child's initial understanding of love and trust must be from his/her family and it must not be a place where the guardian angels turn demons.

"We shape our dwellings and afterwards our dwellings shape us."-Winston Churchill

बाल मजदूरी में बीते हैं बचपन हमारे !

CHANDAN KUMAR SINHA , PROGRAMME COORDINATOR, CRC, CNLU, PATNA



बाल मजदूरी एक ऐसा आपराधिक शब्द है जिसे हम उतनी सहजता से समझने को तैयार नहीं होते हैं। प्रायः सभी को ऐसा लगता है कि यह सदियों से चलता आ रहा है, इसे खत्म कर पाना मुश्किल है। मैं मानता हूँ कि मुश्किल है पर असंभव नहीं है। जिस दिन से हमसभी के मन में यह विचार आ जाये कि हम न किन्ही से बाल मजदूरी करवाएंगे और न ही आस पास में होता देखेंगे तभी हमसभी इस पर विजय पा सकते हैं। बाल मजदूर अक्सर चाय के दुकान, इट भट्टी, छोटे बड़े कल कारखाने में देखने को मिलते हैं।

क्या हमें नहीं लगता है कि उनका स्थान इन सभी जगहों पर नहीं बल्कि विद्यालय में होना चाहिए?

क्या हमें नहीं लगता कि उनके हाथों में हथोड़े या रिंच न होकर कॉपी कलम होना चाहिए?

बचपन ईश्वर का एक ऐसा सौंदर्य रूप है जिसमें बच्चों को खेलना, खाना तथा प्रकृति द्वारा निर्धारित सभी गुणों व अवगुणों को उनके माता पिता या रिस्तेदारों व समाज के कई बुद्धिजीवियों से सीखना होता है। हमारे समाज में ऐसे बहुत से बच्चे दिखाई देते हैं जो पढ़ना व खेलना तो दूर, उनके नाजुक हाथों में हथोड़े, छेनी, हाशिये और न जाने कौन कौन से हथियार थमाये जाते हैं। जिस्से उनका बचपन जीना एक अभिशाप बन जाता है। उसे इस उम्र में ही ऐसी जिम्मेदारियों का सामना करना पड़ता है जिस्से की वह बाल्यावस्था में ही परिपक्व हो जाता है, तथा अपने परिवार के जीवनयापन का एक हिस्सा बन जाता है। वैसे बच्चों के भविष्य को सुनिश्चित करना, उनके बचपन को महसूस करना यह हमसभी का कर्तव्य बन जाता है।

बाल मजदूर से हम सभी अच्छी तरह वाकिफ हैं। कोई भी ऐसा बच्चा जिसका उम्र 14 वर्ष से कम हो और वह अपने एवं अपने परिवार के जीवन यापन के लिए कामकर रहा हो बाल मजदूर कहलाता है। चाहे इसके पीछे उनकी आर्थिक परस्थिति, समाज की प्रताड़ना या खुद की लाचारी आदि होने के कारण बाल मजदूरी का प्रकोप बढ़ता जा रहा है।

आज पूरे संसार में 215 मिलियन से भी ज्यादा ऐसे बच्चे हैं जिनकी उम्र 14 वर्ष से कम है। इनमें से बहुत से ऐसे बच्चे हैं जिनका उपस्थिति शैक्षणिक संस्थानों व विद्यालयों में न होकर बल्कि छोटे बड़े उद्योगों में होते हैं।

सरकार द्वारा बाल मजदूरी को रोकने के लिए कई अधिनियम लागू किया गया है।

बाल मजदूर अधिनियम, 1986 के अनुसार 14 वर्ष से कम उम्र के बच्चों से कार्य करवाना अपराध माना गया है।

कारखाना अधिनियम, 1948 के अनुसार 15 वर्ष से कम उम्र के बच्चों से कार्य करवाना अपराध माना गया है। इस प्रकार अलग अलग अधिनियम के अनुसार वर्णन किया गया है।

बाल मजदूरी की रोकथाम के लिए यूनिसेफ एवं कई गैर-सरकारी संगठनों का भी महत्वपूर्ण योगदान रहा है। उनके द्वारा समय समय पर जागरूकता अभियान तथा इससे जुड़े कई कार्यक्रम भी चलाए जाते हैं।

मेरा मानना है कि सरकारी व गैर सरकारी संगठन तभी प्रभावि होंगे जब हमसभी उनका पूर्ण रूप से सहयोग करेंगे।



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