

# INTERPRETING CHILD RIGHTS: RIGHTS OF THE CHILD IN THE CONTEXT OF CHILD ABUSE IN INDIAN REGION

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## ABSTRACT

The research paper follows the issues related to child abuse, which are increasing every day. Child rights are the most debated issue among the intellectuals of the society. The research paper has made an attempt to provide an insight on several major issues, which comprises of history of child rights, the literature related to it and similar topics concerning to child rights. Emphasis has been laid on the abuses suffered by the child such as sexual abuses, child labour, trafficking of children, internet related crimes against child, child marriage etc.

In this research paper, the author has made a critical analysis on the abuse of the child and the failure of society as a whole because it is also responsible for the abuse to the same degree as the perpetrators itself. The Convention on Rights of the Child, 1989, defines child and addressed various issues relating to the child rights. But, the implementation of convention into different states, cultures, and societies is an arduous task. It is the society which becomes the breeding ground for the perpetrators or pedophiles, due to their mental or emotional condition and the lack of sensitization of the people on child rights and child abuses. Different studies have been shown to highlight child abuses round the world. Recent incidents of banning of female genital mutilation in Sudan and the incident of 'bois locker room' in India have been discussed in the context of child abuses. The role of judiciary in protecting child rights through landmark judgements have been discussed in reference of child abuse. Issues such as juvenile delinquency and the emphasis on lack of adequate legislation addressing the need for protection of the child are raised. Suggestions related toward increasing parental control and systemic approach towards protection of child rights have been made. In the age of sharp decline in the morality among human beings, protection of children and their rights are of crucial importance.

**Keywords** – Child rights, Child abuse, Education, Health, Child Labour

## INTRODUCTION

*“Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that”*

-Martin Luther King Jr.

Child abuse is the prevailing fire that is taking down our societal framework<sup>i</sup>. Children are the most vulnerable groups in the international community. Child rights are such inextricable and basic in nature that by virtue of being human, are endowed without discrimination on the basis of religion, race, caste, creed, sex, nationality, social or economic conditions in the society. Children are often found in situations being deprived of their Fundamental Rights(FR), due to their developmental immaturity, which means they become open to victimization. Their limited knowledge, risky behaviour, experimental curiosity, lack of self-control etc. makes them an uncomplicated and unchallenging target for the perpetrators of the law and human dignity. All over the world children are facing serious violence against them in the backdrop war crimes, social stigmas, sexual confrontation with adults, child labour, juvenile injustice.<sup>ii</sup> Children round the globe are exposed to violence, abuse and crime. Taking cognizance of the facts, children need ‘care and protection’ from the ‘outside world’ specially by their parents, which forms the first and foremost crucial shield in the ‘best interest of the child’, meeting the needs of ‘survival and development – physically, emotionally, psychologically, spiritually etc. of the child’. In 1924, need for the special safeguard towards the rights of the child was widely accepted in Geneva Conference<sup>iii</sup>. In after-math of the World War–II, the Massacre of rights of every individual happened on global stage, children(rights) also didn’t remain untouched by the gruesome reality of war. The United Nations came into existence with aim to protect and preserve the Human Rights round the panorama of human existence. The United Nations General Assembly formally accepted the Declaration of Child Rights on 20<sup>th</sup> November, 1959. The Declaration specifically proclaimed that child being a physically and mental immature, needs special safeguard and appropriate legal protection. After celebrating 1979 as the ‘year of the child’. In 1989, celebrating thirtieth anniversary, it was recognized that child needs protection of special and exclusive nature and Convention on Rights of the Child (CRC) was adopted, which was the first international legally binding document of the Human Rights in full length – Civil, Cultural, Economic, Political and Social Rights. The convention spells out 54 article and two optional protocols. Article 1 expounds the definition of the child to be “every

person who is below the age of 18 years”. Other articles of CRC, for instance, article 3 define ‘best interest of the child’, article 33, 34, 35 defines exploitation in various form<sup>iv</sup>. The convention forms a sacrosanct intricate framework to help child in protecting (abuse) and enforcing(rights).

India became independent on 15<sup>th</sup> of August, 1947. Attaining independence was not the end, but a new struggle to establish a Democratic India on the principles of ‘Justice, Liberty, Equality, Fraternity’ after the struggle of 200 years with slavery at the hands of British. India being(presently) the largest Democracy in the world, laid foundation stones on being-Sovereign, Socialist, Secular, Democratic and Republic, with formally recognizing the Fundamental Rights and Directive Principles of State policy of every being in the Written Constitution. Article 14-31 of the constitution protect the Human Rights of the beings with Right against Exploitation, Right to Equality, Right to Life, Right of Freedom of Religion, Social and Cultural<sup>v</sup>. They formed negative rights with can be enforced against the State. Supplemented by Directive Principles of State Policy, which forms the positive duties of the State. The framer of the Constitution was cognizant of the Human Right of citizen and non-citizens.

*“When human rights are guaranteed by the written constitution, they are called fundamental rights because a written constitution is the fundamental law”*

-D.D.Basu

In 1974, India adopted the National Policy on Children (NPC), thereby implementing the constitutional provisions of rights for development of the children and their well-being. The policy recognized the child as most valuable ‘National Asset’. In 1975, government implemented the Scheme of Day Care Centres for Children of Working and Ailing Mothers. In 1976, Child Marriage Restraint Act of 1929 was amended and the Bonded Labour (System) Abolition Act was enacted. In 1978, the Suppression of Immoral Traffic in Women and Girls Act (1956) was also amended. The legislation was also passed for neglected children and which in conflict with law known as Juvenile Justice Act, 1986, repealing the older Children’s Act, 1960. Government of India formally ratified the Convention on Rights of the Child on 11 December, 1992.

This article dichotomizes and juxtaposes the critical reality and aims at highlighting the loopholes in the current environment surrounding children and will suggest cognition of better framework for all protection of the child and its rights.

## HISTORY OF CHILD RIGHTS

The history of Greeks, Romans and Hebrews, presents evidence of children and wife being treated as mere chattels of society. These civilizations have a major impact on the cultural norms of the western world. This led to the result of them being treated as objects of intervention not a legal subject having their own right. The Romans law exercised '*patria potestas*' where male head of the family was master of the family, their rights succumbed at his disposal. It included '*lus viate necisque*', the right of life and death, unparalleled corporal chastisement over wife and children. In ancient Greek children with disability were left open in the woods at the mercy of nature, hoping for them to be surely killed by animals, till Christianity became state religion. No doubt the middle ages were called the 'dark ages', Magna Carta, 1215, which led to subside the unchecked and absolute power of the king John, England after the civil war. The French author, Philippe Aires in his book '*Centuries of Childhood*<sup>vi</sup>', had described about the ethos of culture in which 'the concept of childhood does not exist at all'. His observation made remark on children as 'miniature adults'. According to him the idea of education for centuries remained at the higher rungs of the society, it was around the Eighteenth century that idea percolated to lower rungs of society. Another author Lloyd de Mause, in '*History of childhood*<sup>vii</sup>', depicted a strong cynical portrait of society on childhood. He went on saying that 'history of childhood is a nightmare from which we have only recently begun to awaken'.

In context of Ancient India, philosophers have evolved the theory behind 'Dharma' around 5000 years ago. 'Dharma' can be traced in 'Manusmriti' by Manu and 'Arthshastra' by Kautilya, which have remained in epitome of Indian legal Jurisprudence. The idea of equality germinated from Vedas.

"Implementation of the principles of social justice and human rights for establishing a welfare state in the true Indian sense".

-Swami Vivekananda<sup>viii</sup>

In Indian cultural framework, mother is taken as the foremost caretaker of the child's immediate family, then comes the society as *Jati* (caste) playing role of secondary caretaker. Taking a look at Sanskrit literature, child is shown as a desire and focal point of the lives surrounding him/her. Description of the child as boon, happiness of father and unprecedented joy of woman becoming 'Maa' in the lyrical address of various artist. Before getting into laudable work of literature, I would like to elaborate on the gravest drawback of patriarchal Indian society where girl child was awarded inferior status. Female members of the house use to give deliberate 'training' to younger females how to obedient to husband and elder male members. Marriage of girls at younger age marked the end of their childhood. This lower status of women since childhood ossified into female infanticide and other crimes against women.

### **ABUSE AGAINST CHILD**

Child abuse is the injury inflicted on the child either physical, sexual or emotional by parent or any other person. It can be also in form of neglect through lack of love, care, attention and protection. Child abuse is increasing at a rampant rate all over the world and India is not untouched by it. Children comprises of ¼ of the population of the world. On primary basis child abuse was considered to be a phenomenon of developed countries, but later realized that it was increasing at unprecedented rate all over the globe. According to first National Incidence Survey (NIS) conducted in United States of America (1974), 60,000 cases of child abuse was recorded and the number of cases reported jumped to a whopping 2.4 million by 1989. Indian constitution recognizes the need of protection of child but unfortunately is defiled by the 'Personal Benefit' approach of the perpetrators. Most of the abuse happens in the grey area of law where lack of specific legislation abets the violators to act. For instance, lack of specific provision in Indian Penal Code, 1860 against sexual violence of male children.

*"Children will not remember you for the material things you provided but for the feeling that you cherish them"*

-Richard L Evans

The harsh reality is that large segment of child population is exposed to child abuse. Such horrifying realities challenges the very rationale of National Child Policy "Children are supremely important assets and their nature and solitude are the nation's primary responsibility"<sup>ix</sup>. Various conditions underlying of abuse are germane of poverty, racism,



female child devaluation, armed conflict, political and cultural norms, and insufficient education etc., Neglect forms a major socio-psychological abuse among cultures of various communities in different states at different parts of the world. The extent of the issue is multidisciplinary like medical professionals used ‘child battering’ where emphasis is on for intervention whereas psychiatrist use ‘child abuse’ where emphasis is on emotional/mental/physical aspect of child. Ministry of women and children elaborates on various types of abuse:

1. Physical abuse: it includes use of physical force on child like slapping, kicking, shaking etc.
2. Emotional abuse: it includes the emotional psychological trauma suffered by the child in various underlying conditions.
3. Sexual abuse: it includes sexual exploitation if child in any physical, verbal and emotional form. It is of two types – severe and other forms. Severe form include rape, photographing a child in nude, exposure of child private body parts, etc., other forms includes forcible kissing, sending obscene messages via internet etc.
4. Neglect abuse – it is most subtle form of abuse. It includes maltreatment of child, abusing child, lack of attention, gender discrimination, improper supply of food, etc.

## **SEXUAL EXPLOITATION OF CHILD**

World Health Organization described sexual abuse against child, where child participates in sexual activities and is unable to give informed consent, or unable to comprehend the conduct, or against the social anathema of society. Targeting the sexuality, sexual organs and sexual gesture, images, words are also part of sexual abuse. Sexual child abuse is inextricably linked to fondling child genitals, sodomy, incest, rape, exhibition of organs, production and distribution of pornographic material. Victims of sexual abuse is shattered by the breach of trust, emotional trauma, mental agony. Sexual abuse differs from other abuses as it not dependent on the discipline, rearing or developmental needs, it is an intrusion or breach of trust, exploitation of the innocence and tender nature of child. Analysis done by Meta discovered horrific results, in reports it was found that sexual abuse is increasing at an extensive rate with 18-20% in girls and 8% in boys in the world.<sup>x</sup> Sexual abuses are usually done by the members near the child, within the family or relatives instead strangers. Level of mental agony, psychological trauma, breach of trust depends on the relation of perpetrators with the child.

Child sexual abuse have detrimental impact over the child leading to suicide, depression, chronic pain or fatigue, eating or sleeping disorder or post traumatic syndrome.<sup>xi</sup> The mental harassment of the child also increases with the exposure to insensitive media and it is particularly dreadful for the child to bear the contact with accused for procedural tenets of law.

*“All human beings are born free and equal in dignity and rights.”*

- Universal declaration of Human Rights

‘Pedophilia’ refers to the sexual interest experienced by adults or adolescence for prepubescent children leading to sexual fantasies, urges and goal-directed sexual behaviour. In law enforcement, term ‘predatory pedophiles’ are referred to convicts or accused in socio-legal scenario where they are in interrelation with minors. Not all convicts are pedophiles and all pedophiles engage in sexual encounters with child. “People don’t choose what arouses them — they discover it, No one grows up wanting to be a pedophile.” said Dr. Fred Berlin, director of the Johns Hopkins Sex and Gender Clinic.<sup>xii</sup> Ministry of women and child published a report entitled “*Study on Child Abuse in India 2007*”<sup>xiii</sup>, it was estimated that around 53% children in India are subject to child abuse. Despite the legal frame work available, the perpetrators take advantage of the lacunas in the law, for instance, the restrictive interpretation of section 375 of Indian Penal Code, 1860 must be amended according to the needs to changing society. The original section mandates the all-forms penetration penile/ vaginal/ oral/ anal/ objects in vaginal/ anal/ penile which must be done away with. Child testimony should be considered in cases of heinous crimes such as rape. legislation(personified) has made several efforts to curb sexual offences/abuse against the child, one of the few steps is the enactment of the Prevention of Children from Sexual Offences Act 2012 (POCSO)<sup>xiv</sup>, which recognizes the all gender which is a step ahead. It also includes all forms of sexual offences – penetrative/non-penetrative/virtual/physical and declassify itself from adult sexual abuses, making child sexual abuses as a separate category. It puts the onus on accused to prove his innocence. Supreme court have made constitutional interpretation in support of child by virtue of article 14, 24<sup>xv</sup> to protect child against exploitation. In the judgement of Anchorage orphanage, 2011 supreme court sentenced pedophiles Alan Waters and Duncan Grant for six years of imprisonment for offences of sodomy on children<sup>xvi</sup>. In its judgement<sup>xvii</sup>, Supreme Court addressed the issues of lack and vulnerability resulting from – poverty, caste, gender, lack of information, lack of schooling. But this decision was also criticized for the process being not effective as court of

law regarded child as 'unreliable witness'. When ministry of women and child released report, it commented "*Child abuse is shrouded in secrecy and there is a conspiracy of silence around the entire subject.*"<sup>xviii</sup> As a society we must understand that sexual child abuse is fundamentally about in relation to power. The perpetrators know that the children will not complain about the sexual abuse, if they will, society will not believe them. As a society we must be effective, consistent, and sensitive in protecting our children against sexual exploitation.

## **CHILD LABOUR**

International Labour Organization defines "The term 'child labour' as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work."<sup>xix</sup> Child labour is the dagger that is striking deeper, each time we pull it is out into the soul of the India. India being the home of the largest child labour force in the world estimated to a mammoth amount of 33 million from the age group of 5-18 years.<sup>xx</sup> Policy makers have failed miserably to tackle the problem. Child labour is more of a socio-economic problem where in many instance children are willing to take up the work for the sake to earn extra money for their family. Lack of education of part of children and awareness on part of families is the major cause of child labour. Absence of schools and lack of interest of children in monotonous and dull school curriculums makes a detrimental shift of child in child labour. Factories owners are circumventing the legislations, using ill-perceived tactics. Children are pushed into forced prostitution by their own families or through kidnapping by luring them with job offer. Prostitution is the worst form of child labour where young girls are promoted as safe sex objects, free from sexually transmitted diseases as compared to older women. Mother which are into prostitution are throwing their children into such hideous and monstrous nature of work. Instead of being rejected by most sections of society, prostitution is prevalent. Bonded child labour is another form of labour where Human Rights are slaughtered for cheap labour work force.

*"Child slavery is crime against humanity. Humanity itself is at stake here."*

- Kailash Satyarthi, Noble peace laureate



The Child Labour (Prohibition and Regulation) Act<sup>xxi</sup> came into force in 1986, to curb the menace of child labour. The intent of the act was to regulate the working environment of the children and prohibit the working of children under 14 years of age in specified occupation. The act categorically failed to acknowledge a large spectrum of hazardous work, where children were exploited – the glass work and carpet making industries of Uttar Pradesh,<sup>xxii</sup> the beedi, the slate-pencil making industry in Madhya Pradesh and match-sticks and fireworks industries in Tamil Nadu.<sup>xxiii</sup> In 2006, working of child in the following industries were banned – hotels, dhabas, SPA's, motels, tea shops and other recreational centres, to put an end to the plight of the children. Rights to education was categorically inserted in article 21 of the Indian constitution by 86<sup>th</sup> amendment. Education is the only tool which can help to tackle the impinged effect of child labour. Supreme court through the judgment of M.C.Mehta v. State of Tamil Nadu<sup>xxiv</sup> where justice B.L. Hansaria started the judgement with "*I am the child. All the world waits for my coming. All the earth watches with interest to see what I shall become. Civilization hangs in the balance, for what I am, the world of tomorrow will be. I am the child. You hold in your hand my destiny. You determine, largely, whether I shall succeed or fail, give me, I pray you, these things that make for happiness. Train me, I beg you, that I may be a blessing to the world*".<sup>xxv</sup> The highest court of law has been vocal on issues pertaining to child labour and the Right to Education as the fundamental right of the child from 6-14 years of age.<sup>xxvi</sup> Right of Children to Free and Compulsory Education Act, 2009<sup>xxvii</sup>, further amended in 2019, is one of the proactive steps taken to curb child labour. In 2016, the legislature promulgated blanket ban on any kind of labour under the age of 14 years, making it a criminal offence.<sup>xxviii</sup> Traumatic behaviour is experienced by children exposed to emotional, mental, sexual, physical labour. The biological, physical, emotional, mental identity is lost somewhere when child is put to strenuous labour, destroying their ability to comprehend their childhood.

## **CHILD MARRIAGE AND FEMALE INFANTICIDE**

According to the UNICEF, child marriage is the marriage of the child below the age of 18 years with a partner being adult or child<sup>xxix</sup>. When children are married underage, it becomes a violation of their rights and are subject to violence, exploitation and abuse. Both girls and boys are usurped of their childhood, but girls are subject to more disproportionate side of the symmetry. Another conflux is the Female Infanticide, in which girl child is killed or neglected to an extent that she finally meets the fate. In India, the desire of the male child is highly

persuasive in chasms of patriarchal society. According to a report, India's ranked 95<sup>th</sup> in Gender Inequality Index.<sup>xxx</sup> According to the census 2011, ratio dropped to 919 girls per 1000 boys which is down-hill from the census of 2001 where the ratio was 927 girls per 1000 boys. Female infanticide happens because of two reasons – first, female child is being considered as 'liability' not 'asset' and second due to the financial burden, in India, it is considered having a female child is huge financial burden. Female infanticide and child marriage are conundrums of a society where traditions and customs(personified) are the '*High priests, where Temple is shrouded with secrecy*'. Convention on the Rights of the Child protect the child from harmful and traditional practices like 'child marriage', it is also a violation of Declaration of Human Rights which states that "*marriage shall be entered with free and full consent of the intending spouse*". Child marriage violates the child's right to a healthy and nourishing livelihood. The actions sabotaged the childhood to grow, prosper, understand and articulate world according to their own will. Ramifications of child marriage put child in grave peril, at the door step of violence. About one in four married girls and women suffered physical abuse at the hands of their husband.<sup>xxxix</sup> United Nations Department of Economic and Social affairs declared India as most vulnerable for girl child in 2012.<sup>xxxii</sup>

*"Child Marriage is a practice that robs millions of girls of their childhood, their rights and their dignity."*

– Archbishop Desmond Tutu

Effects of the child marriage are perennial in nature. Early marriage increases the risk of gynecological infections, reduced maternal mortality, unwanted pregnancies and depression. It also increases pre-nuptial malnutrition, lack of control over reproduction, increased fertility which in turn leads to over population. Legislation enacted with the intent to protect child from the adversaries of child marriage was Child Marriage Restraint Act, 1929<sup>xxxiii</sup>, which prescribed the age of 21 years for male and 18 years for female, for the purpose of marriage. But the legislation having prospective effect didn't addressed the issue pertaining to already worsen off children under the veil of marriage. The Indian Penal Code also lacked in taking cognizance of the consent of women in Marital Rape. The former act was repealed by the Prohibition of Child Marriage Act, 2006<sup>xxxiv</sup>, which made the offence cognizable and non-bailable. The act put the onus on the parents, guardians or any person associated, in preventing child marriage. It also provides the groom and bride with option of nullifying their marriage. Amendment bill in 2016 was proposed to make child marriage from voidable to illegal, making provision for

maintenance after divorce till remarriage, increasing the age of consensual intercourse to 16 years. Supreme court in its interpretation of the child marriage act, 2006 clearly established that section 9 of the act did not intend to punish the male child between 18 to 21 years for marrying a female adult.<sup>xxxv</sup> Recently Supreme court in its landmark judgement declared sexual intercourse with minor wife is rape while interpreting exception 2 of section 375 of Indian Penal Code, 1860. Justice lokur stated “*A child remains a child whether she is described as a street child or a surrendered child or an abandoned child or an adopted child. Similarly, a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated or widowed child.*”<sup>xxxvi</sup> Female infanticide also alluded as ‘gendercide’, the consequences of female infanticide results in adverse sex ratio, increase in trafficking and kidnapping of women, increase in rape and assault and decrease in population, which if not impossible will be a strenuous task to cope up with. In 1994, government passed the Pre-natal Diagnostic Techniques Act (PNDT)<sup>xxxvii</sup>, which protected the screening of child sex in womb. Supreme court in its landmark judgement recited that “female child is entitled to enjoy equal rights male child is allowed to have.”<sup>xxxviii</sup> Both child marriage and female infanticide are relics still haunting our present and future generations, they must be abolished.

## **JUVENILE DELINQUENCY**

Juvenile Justice (Care and Protection of Children) Act, 2015 defined juveniles in section 2(35) as ‘a child below the age of eighteen years’<sup>xxxix</sup>. Every society in the world is sullied by the unfathomable horrors of juvenile injustice. With the passage of time, the meaning of delinquency has also gone under a change. The social fabric of the society is designed to provide tender care and love to the child, but when that care (including other factors) is vindicated, child tends to get involved into a harsh reality of crime. The economic growth has resulted to inconsistent behavioural pattern of the individual. The lower strata of family have undergone transitional change with the industrial revolution. The increasing phenomenon of individualism with exposure to arms and ammunition, drugs and alcohol have derailed children from their tracks. With a greater number of girls getting assaulted and involved in crime as child and adolescent is often considered as a start of long career in crime. Emotional disturbances have often led to the violent actions by child. The problem of psychologically distressed children is increasing day by day. Conceptualization of delinquency by the society will decide that if a child’s behaviour is delinquent or not. Delinquency is a result of various

factors which varies from social factors to personal factors. Social factors include bad company, early sexual exposure, motion pictures and pornographic films, vocational disinterest, broken homes. Personal factors include deficiencies mentally or physically, emotional distress.

Child delinquency is recognized as an imperative threat to world community, India is no exception. India amended its law in juvenile delinquency with Juvenile Justice (care and protection of children) Act, 2000<sup>xi</sup>. It is a comprehensive legislation dealing with issue of juveniles and their passage in coming back to the mainstream society through care and rehabilitation. Apart from the juvenile crimes, it also deals with violence faces by the juveniles. According to the act, the cases of juvenile crimes will be treated Juvenile Justice Boards or Juvenile Courts. Juveniles can be punished with a maximum period of 3 years in rehabilitation centre or reformation home. The most contentious issue with the Juvenile act is the 'no punishment' clause for the juveniles in conflict with law. juveniles are only subject to reformation not punishment. This clause was challenged by the upheaval in society after the heinous Delhi gang rape in 2012.<sup>xii</sup> The main accused was a juvenile, who only got punishment of 3 years in remand home. This issue was much debated after the incident as to reduce the age of juvenile from 18 to 16 years. The child right protectionist sought to put forth an argument that we can't reduce the age because of the social upheaval by one incident. Also, India being a signatory of Convention on Rights of the Child cannot reduce the age, as it will be violative of its guidelines. The government came up with an amendment in 2015, where juvenile between the age of 16 to 18 years can be tried as adults in case of heinous crime.<sup>xiii</sup> K.T.S. Tulsi said that "It is important because the juveniles were undergoing exploitation at the hands of gangs, as the gangs know that even if a person under the age of 18, even by one day, one month or one year, they just cannot be punished under the ordinary law. They cannot be detained in police custody, jailed or even sentenced to jail for more than three years under the juvenile justice board. Because of this knowledge, the children were drawn into crimes by the criminal gangs".<sup>xliii</sup> Thus, we can see that child is suffering and the society which is meant to protect them, is the same which is exploiting them. This can only be done by educating parents about the need for proper care and attention towards child and building framework of private and public agencies to sensitize people and juveniles about the issues pertaining to juvenile



delinquency. We will have to improve upon our current system of handling and reforming the juveniles, otherwise we'll be doomed by the ramifications of this in the near future.

## **INTERNET AND CHILD RIGHTS EXPLOITATION**

Child rights are extensively impacted by the internet. Both in a positive as well as negative manner. Positive as in connecting child with colossal degrees of information and negative as proliferation of child abuse in different configurations. Parents provide their children with internet so as to provide them with the best of knowledge about cultures, society, human beings and development around themselves, but that sacrosanct intent of parents is defiled by the dark realities which their child faces on internet. Internet have become a new playing field for the pedophiles and other perpetrators of law. In 2017, according to the report of National Crime Record Bureau, 21796 cases of cyber-crimes were registered on internet with a rise of 77% from 2016.<sup>xliv</sup> The report alone is not able to paint the whole picture as there are hundreds of crimes which go unreported each day. Either cyber bullying or ATM frauds, the violators use the simple tactic of anonymity to avoid punishment. With the rise of the internet, the issues relating to child pornography, digital images of children involved in sexual conduct or nudity, increased at an unprecedented rate. Increasing penetration of social media like Snapchat or TikTok is giving the predators a platform to subjugate the child in worst manner possible. The major problem for the children is that social media platforms do very little to verify the age of users. This is one the main reasons for exploitation as nobody knows who's behind that ID adult or a child, faking it or authenticity. Child pornography or child sexual abuse is the worst thing which one can encounter over the internet, but the bitter truth is that, it is being constantly circulated at an unprecedented rate on 'Dark Web'. According to the data released by 'Pornhub', world's largest free pornographic website, India ranked third after taking over Canada just behind USA and UK.<sup>xlv</sup>

Child pornography is an odious act of involving children in making of adult explicit content and in utter violation of dignity, liberty, and rights of the child. In India, watching pornographic content is not punishable in private, but collection, distribution of obscene material in public was prohibited by section 294 of Indian Penal Code, 1860.<sup>xlvi</sup> However after the enactment of Information Technology Act, 2000 section 67(B) of the Act prohibited use of children in making pornographic content.<sup>xlvii</sup> Protection of Children from Sexual Offences Act, 2012 also



prohibited creation of child pornographic content with section 14 and 15.<sup>xlviii</sup> Biggest lacuna involving social media is the 'Age Verification' issue. This issue has risen from time to time due to the case involving black mailing of children through social media platform, coercing them to create pictures and videos of self-nudity, mentally harassing them through stalking and spreading of fake news. The infamous case of *Deo v. Sexsearch.com*<sup>xlix</sup>, where the petitioner was charged with unlawful sexual conduct with a minor girl child as the minor forged her age (actual age 14 years) on the defendant website. Even though the sexual conduct was consensual, the petitioner contended that defendant failed to verify age of the minor. The court rejected his arguments and observed that petitioner also failed to ask her about her age when they met in personal and while signing up for the website, he must have applied due diligence to confirm that website is taking positive steps towards verifying age or not. Government has come up with measures to cope up with issues relating to social media, through tackling the contest between individual right and sovereignty and integrity of nation.<sup>l</sup> Supreme court in the case of *Kamlesh Vaswani v. Union of India*<sup>li</sup> ordered the full-scale ban of porn websites circulating child or rape videos. The case was started in Dehradun, Uttarakhand, where 4 boys raped a minor girl in a store room, boys said they were inspired by pornographic material. Uttarakhand High Court, ordered a complete ban on all pornographic material sharing websites. Supreme court diluted the order to only banning websites with Child pornography. The Madras High Court in *S. Muthukumar Vs. The Telecom Regulatory Authorities India and Ors.*<sup>lii</sup> passes an interim order on ban of social media app TikTok citing that app contains material which can make children expose to explicit content available on internet. Parents can protect their children by creating web filters or making use of VPN. In the world where individualism is rising children are becoming distant from their parents and are engaging more in such horrendous activities. Child being exposed to sexual abuse online have traumatic psychological and emotional corpus. There is no full proof method to avoid and protect our children from such content, only strict and concerned parental control over online activities of children before majority (18 years) is the only way out.

## **ROLE OF JUDICIARY IN PROTECTING THE CHILD RIGHTS**

India got its independence in 1947, with the independence, a new power tussle started between the three established democratic wings of the government by virtue of supremacy of constitution. With the executive and legislature constantly trying the limit the scope of judicial

review thereby restricting the independence of judiciary through number of legislations and executive order(ordinance), but judiciary have always risen to the need, for the people of India. Judiciary always have kept intact with the two postulate of article 14 of the Indian constitution – equality before law and equal protection of laws. The motto of the Supreme court ‘*Yato Dharmastato Jayah*’ – ‘*where there is righteousness, there is victory*’ can be clearly seen in the judgements given by supreme court in issues of every field, rights of the child is no exception to it. Judicial activism is the tool used in protecting children against exploitation, sexual abuse, child labour, child marriage etc. Some landmark judgements pronounced by supreme court are discussed (not exhaustive). Starting with the case of critical importance *Peoples Union for Democratic Rights v. Union of India*<sup>liii</sup>, court held that construction site was violative of the child rights against exploitation, enumerated under article 24 and 14<sup>liv</sup> of the constitution and the then existing statute was unable to provide statutory protection necessary. Also, that rights of the child will be available to them even if there is lack of provisions envisaged in the interest of public. Interpretation of article 24 reached a new high in the case of *Salal Hydro Project v. State of Jammu and Kashmir*<sup>lv</sup>, where Supreme court denied to put complete ban on child labour sighting reasons of economic instability and ineptitude of the common man in the country. Court reiterated the stand taken in above case and held that as long as country is troubled with destitution and poverty, child labour will exist in some form. “*when the whole world is silent, even one voice becomes powerful*”

-Malala Yousafzai

Sexual exploitation of children is a dreadful crime which judiciary tried to curb with the judgement in cases like *Vishal Jeet v. Union of India*<sup>lvi</sup>, the case addressed the question of child trafficking. Children in their tender age, especially girls are sold in the ‘flesh market’ as meat loafs, denied of human dignity and freedom. The practice of human trafficking is prevalent in utter contradictions of laws and consciousness of the morality. In *Gaurav Jain v. Union of India*<sup>lvii</sup>, court held on provisions of equality of status and opportunity for the children of prostitutes who are cut from the main stream of the country. Child prostitutes are also eligible to same degree of care, protection, love and rehabilitation like other children, court ordered for a formulation of a committee which will work for the rehabilitation schemes. In *Sheela barse v. Union of India*<sup>lviii</sup>, the plight of juveniles illegally detained in jails was addressed, court held that child being recognized as the ‘national asset’ must be treated specially with care so as to avoid mental and emotional distress. Education is the most powerful weapon which can be

used to fight for justice. In *Unni Krishnan J.P. v. State of Andhra Pradesh*<sup>lix</sup>, Supreme Court observance of the right to education as the fundamental right under the constitution was a hall mark decision on rights of the child. After the judgement, in 2002, article 21 was amended to enumerate the intrinsic ‘*Right to Education*’ under the constitution. The eighty sixth amendment was made to provide free and compulsory education for all children between the age group of 6-14 years. Judiciary have always been the last bastion of hope for the child, whenever legislature failed to protect basic rights of children, concrete steps are taken for construction of better environment for the development of children.

## RECENT INCIDENTS RELATING TO CHILD RIGHTS

The development of child rights had passed many hurdles before rising to the status of international Human Rights. Efforts made in recent development, in the field of child rights are noteworthy. The banning of ‘*Female Genital Mutilation*’ in war torn country like Sudan, is a milestone in elevation of stature of women. According to a report by WHO, nearly 200 million girls<sup>lx</sup>, around the globe are subjected to such battering of their rights. As the devourers of human dignity kneeled to the transition of human being from scavengers of life to nourished individuals with life, to live and die with dignity. In Sudan, 9 out of 10 women<sup>lxi</sup> have undergone some form of genital mutilation and the repercussions relating to mental, physical, emotional and sexual abuse of the women are endured lifelong. Another incident of child rights violation steered from India, the ‘*Bois Locker Room*’ incident<sup>lxii</sup>, the case started with a series of revelation of lewd screenshots from a chatroom in social media app, Instagram. The chatroom was used to objectifying women and discussing sexual assaults on the girls. The incident brought light to the issues lurking, destroying the mental health of the children influenced through internet. It revealed the need for sexual education, talking about sexual conduct and sexuality. It also pointed out the mindset prevalent in community, objectifying the women. The National Commission for Women took *suo moto* cognizance and case was filed against the administrator of the group. This case was one of many, which go unreported in India. These are the kinds of incidents which remind that we have travelled a long distance from 18<sup>th</sup> century, beginning of recognition of child as legal *corpus* but still miles are there to cover.

## CONCLUSION AND SUGGESTION

Child rights in India are developed in different facets. The struggle has always been there and will remain for the need of protection of child rights. Every child born, holds the right to survival, proper nutrition, care, love and emotional wellbeing, by the virtue of being human and no one is entitled to take away these rights. The legislature, executive and judiciary are taking some serious steps in protection and promotion of child rights, but the efforts are well challenged by the excessive amounts of frauds, played on child rights. Children are still seen to be entangled in shackles of child marriage in Rajasthan, female infanticide in Haryana, rapes in Uttar Pradesh and poor literacy rate in Bihar. Our recommendation is to break open such shackles of social stigmas and formulate policies in '*Best Interest of Child*'. A watertight compartmentalization of uniformity in policy will not suffice because of the regional diversity in India. We suggest that a major policy with a decentralized approach must be implemented. This approach must focus on adverse sex ratio, escalation of violence in households, high infant mortality rate, the root causes of such problems must be addressed in order to provide a full-scale upliftment of children, who are deprived of very necessities of life. Education is the stentorian which proves to be most effective, using education as a medium to engage children, recovering from child labour and prostitution. Education will help, ingraining in children, the very meaning of life and human existence. We suggest that sex-education must more extensively streamlined, to educate our children and adolescents about it and protect them from horrors of vulnerability involved. Sex education must be inducted more heavily in allegory of our curriculum. Online abuse of children, which have come up as the most recent threat to child rights must be curtailed with specific legislation addressing children on gender neutral basis. The parental control must be moderated to the extent of security of their children. We will conclude with a bright hope of better world for the child to live in, without the fear, violence or any other abuses. According to the author, phoenix and child rights have similar properties – both rises back from their own ashes.



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## ENDNOTES

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