



Child Rights are Human Rights

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Abstract:

Human rights are understood as rights inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All are equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. When a person's rights are breached by another person or authority having a duty to protect such people's life, it will be violation of human rights. Besides, every new enactment should create its own enforcement wing and the government which wanted that law should also make additional budget provision for it, which should form as financial statement attached to the bill when it is introduced in legislature. Without sufficient finances, the law however effectively drafted, will be an ineffective piece of paper. New enactments for Juvenile Justice, Compulsory Education, child marriage prohibition etc should are well crafted academic pieces of legislative documentation, without social utility. The purpose of law is deliberately defeated by non-provision of systems, infrastructure and finances.

Key words: Compulsory Education, human rights, victim, humanity

Introduction

Human rights are understood as rights inherent to all human beings, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. All are equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Section 3(d) of Protection of Human Rights Act defined Human Rights as "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

When a person's rights are breached by another person or authority having a duty to protect such people's life, it will be violation of human rights. When a father or mother violating right

to life of their child, if a police officer having duty to protect the life and liberty of a person violates it, the human rights of the victim are affected. Human rights are supposed to be inviolable, non-transferable and be respected by every person. In the days where humanity is being diluted day by day, the protection of human rights assumes high importance. The child rights are more important human rights.

Present scenario

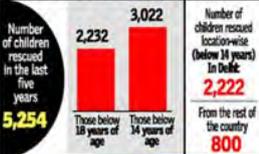
A 9-year-old Kim Phuc running to escape napalm bomb fury in Vietnam. Terrified girl ripped off burning cloths. Nick Ut took this photograph. This shook the world and developed surging opinion against war and US was forced to stop the war 1973. Nick Ut got Pulitzer award for this photo. He rescued her and they met after four decades.



The Hindu dated 24th November 2015 published a report saying that male child preference is still going on in this country. The report says: "New Census data indicates that two processes around the preference for a male child are going on simultaneously in India — prenatal sex determination and repeated pregnancies. Data on family sizes and sex ratios released on Monday showed that at every family size, there were more boys born than girls.....However as family sizes got bigger, the sex ratio within the family got much less skewed, indicating that families with fewer or no sons were the ones choosing to have repeated pregnancies.¹.

CAUGHT IN THE ACT

The Bill proposes to reduce the list of prohibited occupations for children to mines, inflammable substances and explosives.



Of the 5,254 children rescued, one-fifth worked with their families or was part of a family-run trade. If the latest amendment to the Child Labour (Prohibition and Regulation) Act, 1986, is approved, children will be allowed to work in family enterprises and in the TV and Entertainment industry, except circus, the report prepared by the Bachpan Bachao Andolan BBA said. There are some lacunae that left unaddressed leave scope for defeating the entire purpose of the Bill," said Nobel Laureate Kailash Satyarthi who founded Bachpan Bachao Andolan. The list of prohibited occupations set forth in the schedule have been reduced to just three, including mines, inflammable substances and explosives. These amendments would mean that children will be allowed to work in family-run industries like carpets, embroidery, agriculture and other forms of domestic labour².



Part I: Loss of future generation

New generation child is either not coming into this world, or if at all enters, child is going to lose the childhood. Tomorrow's adult has no memories of 'childhood'. Where that childhood is lost? The statistics say that one child is missing

every eighth minute. A missed child will miss the life, which s/he is entitled to.

Emotional distress: Master Debu, suffering from spastic problems stated in a children conference:

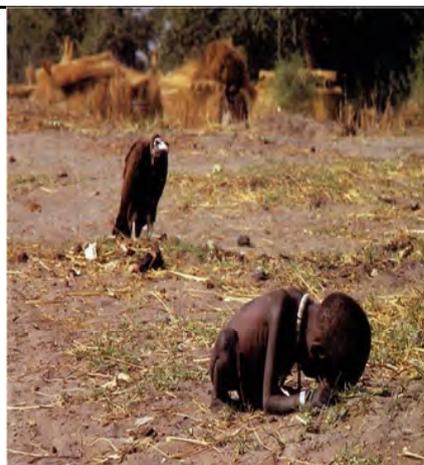
– “I have a right to be called by my name. Why is it that all children are called by their names and I am called langda (lame) or even pagal (mad)?”

The paradox is that it had not occurred to other children sitting there that children with disabilities may be denied even this basic right. This rises a point that we are not even in a position to solve emotional or psychological problems which need no money.

Killing pressures: A class 9th boy of St Mary's Anglo Indian Higher Secondary School stabbed his teacher to

death in a classroom (on 9 February 2012) in Chennai. He later told police that **he was angry at her for scolding him**. 15-year-old boy, repeatedly stabbed his science teacher Uma Maheswari (42) in the neck and face. He stabbed her first in the neck said an eyewitness and inflicted cut injuries again on her cheek and neck. She died on the spot³.

In March 1993, Kevin Carter took photo of a vulture preying upon an emaciated Sudanese toddler near the village of Ayod in southern Sudan. Waited about 20 minutes, for vulture to spread its wings. It didn't. Carter snapped the haunting photograph and chased the vulture away. (The parents of the girl were busy taking food from the same UN plane Carter took to Ayod). This also won Pulitzer award for photographer. Carter eventually won the Pulitzer Prize for this photo, but he couldn't enjoy it. "I'm really, really sorry I didn't pick the child up," he confided in a friend.



The boy is not interested in facing parents. "I've brought dishonor to my family. I can't face them," a police officer quoted him as saying. She had made 13 adverse entries in the boy's school diary, for failing class tests and also reprimanded him.⁴

This indicates severe academic pressures on students today which no legal framework regulates. Rises new criminological questions – what are the real causes of such crimes by juveniles? Traditional criminology has no answers.

A juvenile justice board, comprising a metropolitan magistrate and two social workers, is expected to complete an inquiry into the incident in four months. The board will then decide on the period of sentence.

Compelling Abandonment: A few years ago, in Tirupathi, a child was abandoned. TTD officers protected and published her photo in website. Child's mother came from Kolkata and took her back. Her first husband died in an accident. Second husband and his parents insisted that she should abandon



child. She left the child in Tirupathi and went back to Kolkata crying and repenting. A neighbor in Kolkata saw TTD website and recognized the baby. When the residents of apartment questioned the mother and family, they felt ashamed and forced to bring back the child. Thus the TTD and society reunited them. Though committed a full-fledged crime as per IPC, the mother and her husband and his parents were not prosecuted for crime of abandonment. Reunion is real justice, Legal action or prosecution is not always right solutions.

These three problems are just illustrations which reveal futility of legal action and utility of society. Let us see how the nation offers lip sympathy for the children: The National Policy for Children, 1974 said that the nation's Children are a supremely important asset. Their nurture and solicitude is our responsibility. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Neglecting children means loss to the society as a whole. If children are deprived of their childhood- socially, economically, physically and mentally – the nation gets deprived of potential human resources for the social progress, economic empowerment, peace and order, social stability and good citizenry. Yet the law and legal frame to secure the children is a dire necessity, do we have it?

Part II: The Legal Frame: Reducing the 'age' of Juvenile

Media and political leaders are criticizing that there is serious increase in criminality among the children. Loksabha passed on May 7, 2015 the

Juvenile Justice (Care and Protection of Children) Act, 2014 which will allow children in the 16-18 age group to be tried as adults if they commit heinous crimes. The amendments were prepared in the backdrop of public outcry over the Delhi gangrape case of 2012 in which a juvenile accused received a lighter punishment because of his age. Women and Child Development Minister Maneka Gandhi had said in case a heinous crime (those can be punished with a term of over seven years of jail under IPC) has been committed by a person in the age group of 16-18 years it would be examined by a Juvenile Justice Board to assess if the crime was committed as a 'child' or as an 'adult'. The trial of the juvenile, whether as an adult or child, would depend upon the opinion of the board which would comprise psychologists and social experts, she said. Some members opposed it.

The justice system should focus on rehabilitation and not retribution. It would be emotionally, ethically and morally wrong to punish a child, who does not have access to basic facilities, like an adult. There is no scientific system of determining the age of children and in certain cases it is done by looking at the child.

Highlights of the Juvenile Justice (Care and Protection of Children) Bill, 2014

The Bill replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. It addresses children in conflict with law and children in need of care and protection.

- The Bill permits juveniles between the ages of 16-18 years to be tried as adults for heinous offences. Also, any



16-18 year old, who commits a lesser, i.e., serious offence, may be tried as an adult only if he is apprehended after the age of 21 years.

- Juvenile Justice Boards (JJB) and Child Welfare Committees (CWC) will be constituted in each district. The JJB will conduct a preliminary inquiry to determine whether a juvenile offender is to be sent for rehabilitation or be tried as an adult. The CWC will determine institutional care for children in need of care and protection.
- Eligibility of adoptive parents and the procedure for adoption have been included in the Bill.
- Penalties for cruelty against a child, offering a narcotic substance to a child, and abduction or selling a child have been prescribed.

Key Issues and Analysis

- There are differing views on whether juveniles should be tried as adults. Some argue that the current law does not act as a deterrent for juveniles committing heinous crimes. Another view is that a reformatory approach will reduce likelihood of repeating offences.
- The provision of trying a juvenile committing a serious or heinous offence as an adult based on date of apprehension could violate the Article 14 (right to equality) and Article 21 (requiring that laws and procedures are fair and reasonable). The provision also counters the spirit of Article 20(1) by according a higher penalty for the same offence, if the person is apprehended after 21 years of age.

- The UN Convention on the Rights of the Child requires all signatory countries to treat every child under the age of 18 years as equal. The provision of trying a juvenile as an adult contravenes the Convention.

- Some penalties provided in the Bill are not in proportion to the gravity of the offence. For example, the penalty for selling a child is lower than that for offering intoxicating or psychotropic substances to a child.

- The Standing Committee examining the Bill observed that the Bill was based on misleading data regarding juvenile crimes and violated certain provisions of the Constitution.

Clause 7 of the Bill states that any person who is between the ages of 16-18 years and has committed a serious (between three to seven years imprisonment) or heinous offence (minimum seven years imprisonment) will be tried as an adult if he is apprehended after the age of 21 years (subject to other provisions of the Bill). This provision could violate some Fundamental Rights guaranteed by the Constitution.

The Juvenile Justice

The Beijing Rules on Standard Minimum Rules for **Administration of Juvenile Justice** 1985 set the tone for addressing the problem of juvenile delinquency as an independent issue, with a need to revisit **social policy ramifications**. A separate and **distinct adjudicatory mechanism** following the principles of **rights based approach**, means rethinking the



welfare measures as well as preparing the administration to **handle juveniles differently**. Thus as per these guidelines a comprehensive law, Juvenile Justice Act 2000 has evolved. It is considered as a major step towards combination of rights based approach with integration and rehabilitation process, catering to development needs, care and protection, child friendly approach in settlement, and disposition of matters in best interest of children. It has provided right to survival, right of protection, right to development and right to participation.

However it has left some serious anomalies and gaps which were rectified in 2006 Amendment. In addition to institutional, amendment extended non-institutional approach too. The Act has extended its application to all sorts of detention and prosecution of juveniles under any other law in force. There is yet another amendment bill 2010 pending enactment in Parliament. This bill proposed to remove discriminatory provision which facilitated the children suffering from certain diseases to be segregated from others. This bill came following Delhi High Court's directive in 2009 in a PIL by Kusht Ashadeep Foundation⁵.

Our Constitution provides a comprehensive understanding of child rights. We also have a fairly comprehensive legal regime. India is also a signatory to several international legal instruments including the Convention of the Rights of the Child (CRC)⁶. Government is satisfied with the idea of well-being rather than rights. Its approach largely remains welfarist (does it?). We don't have single child rights code. The Child Rights Convention CRC

is yet to be comprehensively translated into an enforceable law. India adopted a National Policy for Children in 1974,⁷ declaring children to be nation's most precious asset. Yet we are loosing that asset and we do not even alter the policy.

Mankind's Duty: The Mankind owes to the child the best it has to give; child is powerless and vulnerable and hence is in need of special care. 1924 League of Nation's declaration of rights of child concluded in 1959 stating that the child is best protected within the family. The state has responsibility to secure the family and family has to be responsible in securing the child.

Child Success in European Court : In *Marckx v Belgium* 1979, a single mother has achieved legal status of guardian under right to family life under Article 8⁸. In *Tyrer v UK*⁹ it was held that the judicial corporal punishment violated the right of 15 yr old boy under Art 3 which proclaimed that child has to be protected from degrading punishment. Mostly the children do not have access to justice system and law and the violations take place in private sphere, and that is why there are less number of reported cases which reached the courts.

The Child Rights Convention (CRC 1989) has a dual object, first to bring together full canon of human rights applicable to children and to second, assert full equality of children to these rights. Its theme is that the children are equal in worth to adults. The children's rights and those of their parents may be at variance, but unfortunately the worst violations may take place within the family itself. The normative structure that interests of the child and family as coterminous is



deconstructed by the convention. The Children's rights are couched in language of human rights under this convention which classified the rights as: 1. Rights of Provision (surviving and development rights), 2. Rights of Protection, 3. Rights of Participation

The State's obligations

The state has several obligations under this convention.

1. Art 3: Best interests of child be the primary consideration in all matters & decisions; it is a concept in transition throughout childhood, which include special protection & respect for individual's autonomy
2. Art.12: Due weight to views of children
3. Art 5; evolving capacities of child
4. Art 2 Guarantee all rights to all children without discrimination (These have to be read into all articles for all actions by states)

The Government of India has ratified 2 protocols: The year 2005 was noteworthy as the Government of India ratified the two Optional Protocols to the CRC, viz. the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*¹⁰; and the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*. The UN General Assembly on 25 May 2000 had adopted both these Protocols. In 2002 the Government of India also signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, 2000*¹¹. In 2002, the

Government of India endorsed the *SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* and the *SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia*. Besides these international pressures, constitutional frame, the Supreme Court played a significant role in giving relevant directions in various public interest litigations filed before it creating a child rights' jurisprudence. Following are those significant PILs.

- a) Laxmikant Pandey vs. Union of India¹² on Adoption of Children.
- b) Shiela Barse vs. Union of India¹³ on Trafficking of Children.
- c) M.C. Mehta vs. State of Tamil Nadu¹⁴ on Problem of Child Labour.
- d) Vishal Jeet vs. Union of India¹⁵ on Problem of Child Prostitution.
- e) Unni Krishnan vs. State of Andhra Pradesh¹⁶ on Education of Children.
- f) Gaurav Jain vs. Union of India¹⁷ on Problems of Prostitution and Children forced into Prostitution.
- g) Gita Hariharan vs. Reserve Bank of India¹⁸ on Guardianship.
- h) Centre for Enquiry into Health and Allied Themes (CEHAT) & Others vs. Union of India & Others¹⁹.

Reformed legal frame work: Thus the pressure of International conventions on one hand, Supreme Court of India's emphatic directions on child rights through several judgments on the other and increasing demand for socially active groups led to a set of legislative frameworks to realize child rights in the last ten years.

Prohibiting Child Marriage: The Prohibition of Child Marriage Act 2006 has brought out certain emphatic guidelines prohibiting the child marriage. This legislation is armed with



enabling provisions to prohibit child marriages, protect and provide relief to victims and enhance punishment for those who abet, promote or solemnize such marriages. It was declared that the Child Marriages are voidable and also can be annulled by the minors under the guidance of guardians²⁰. The annulment of child marriage could be sought within a period of 2 years after the child who was a party to the marriage has attained majority²¹.

Offenders list is expanded to include amongst others, the guardians/parents of both parties, Priests, Relatives/friends of both parties, Neighbours of both parties, Community leaders who give patronage to such marriages, Marriage bureaus/persons responsible for fixing marriages, Traffickers, The bridegroom if he is over 18 years of age, Caterers and other service providers.

Part III: Ten Vulnerabilities: Despite the law and welfare policy by the State, the children are vulnerable in India. The legal frame explained above does not protect the children but becomes non-implementable because of the following vulnerabilities:

1. Female feticide:

Female sex ratio is falling every decade. Female feticide is proved so strong that it cannot be prevented by Pre-natal diagnostic law. We are not allowing many children to take birth simply because they are female. The fall out is falling child sex ratio, which could bring serious problems for girl children making them further vulnerable with reference to their security and survival. Female feticide is a victimless crime. That is none will be there to complain. The

victim is killed, and parents themselves either kill or contribute to their killing and killers do not complain. This is a major aberration that made the principle that 'family' is the safest place for the children.

2. Discrimination: Despite

Constitutional guarantees of civil rights, children face discrimination on the basis of caste, religion, ethnicity and religion. Even the basic need for birth registration that will assure them a nationality and identity remains unaddressed, affecting children's rights to basic services. We categorize them as 'poor children', 'working children' and 'marginalised children'. The Violations of children's rights are not limited to the poor and downtrodden. They happen in middle class and elite homes too, albeit in different forms. This discrimination is greater in India. And the Girls are in more vulnerable situations such as poverty, disability, homelessness etc. find themselves doubly disadvantaged, by their gender and the physical, economic, political, social situation that they find themselves in.

3. Globalization effect

Policy shift: Globalisation and liberalisation have changed the perspectives and policies of Government, besides, the gender, caste and religious attitudes that prevail today. All these add to children's vulnerability and affect any action that may be taken for them.

4. Legal 'Age' & Criminal Age of girl child:

The terms "infant", "child", "adolescent", "teen", "youth", "juvenile" and "young person" are also used, although some jurisdictions make a legal distinction



between these terms. Minor status carries with it special restrictions, penalties and protections that do not apply to adults. The United Nations defined "child" as an "individual below twenty-one years of age." Juvenile delinquency then deals with children, minor or youth below twenty-one years of age who break laws or fail to do what law requires. The child and Youth Welfare Code, Presidential Decree No. 603 defines youthful offender as "one who is over nine years but under twenty-one years of age at the time of the commission of the offense." A child nine years of age or under at the time of the offense shall be exempt from criminal liability and shall be committed to the care of his/her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. All member states of the United Nations except the United States and Somalia have ratified the United Nations Convention on the Rights of the Child, 1989. According to the Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier²².

Sexual intercourse with wife below age of 15 is rape according to Section 376 of IPC. This means it is not crime to marry a girl who completed 15 years. In a way this provision enables a girl to marry and have sexual intercourse with husband even if she is a child and below the age of 18, provided she is above 15. Same section 376 also says it is rape if a man has sexual intercourse with the consent of girl who is below sixteen years. This means that law recognized that the girl's valid age to give consent to sexual intercourse is 16 years. This is in contradiction with general law of

majority which prescribed age of 18 as majority age for girl, and also with law of contract which says the capacity for a party to enter into a contract is 18 years. If marriage is assumed as contract, how a girl below 16 could be considered as having legal capacity to give consent to sexual intercourse. And this age of capacity further reduces to 15 in case of a wife, which means as a wife girl can consent to sexual intercourse at the age of 15 only. All this is absolutely illogical, baseless and does not stand on any sound legal reasoning. If woman raped is his own wife and above 12 years of age, husband is punished with 2 years imprisonment. If woman raped is his own wife and below 12 years of age, punishment shall not be less than 7 years but which may be for a life or a term which may extend up to 10 years. This contradictory legal frame created a vulnerable situation to the girl child. A girl child is insecure by virtue of this criminal law. These provisions reveal that as a wife and an unmarried girl, she is vulnerable. Why not the criminal law makes a simple and clear provision that intercourse with a girl below the age of 18, married or not, without consent is a rape? This will offer a needed protection to girl child. There is another general question: What age is proper age of giving consent for a girl, is it 12, or 15, or 16, or 18? Why a man's capacity to consent is fixed at 21 and how a woman gets that capacity at 18 only? Age of kid for purpose of determining kidnap is 16 for boy and 18 for girl as per section 360 IPC. This provision offers protection of girl child up to 18, but similar security is not provided by penal code against sexual assault. While the age of compulsory education is 14 years, age of marriage is fixed at 18, age for sexual consent for girl is 16 and for boy it is not defined,



admission to employment is 14, as fixed by various legislations. Thus the inference of the law is study up to 14, if boy one can join employment at 14 and marry at 21. If it is a girl she can give sexual consent at 16, and get ready to marry by 18. Juvenile Justice Act 2000 and Protection of Women from Domestic Violence Act, 2005 have rightly defined age of child of both girl and boy as 18 years.

For the purpose of education the age of child is 14 years as per compulsory education law 2009. But National Child Labour Prohibition & Regulation Act 1986 permits a child below 14 to be employed in non-hazardous conditions of work and above 14 years even in hazardous conditions. This means a child of 14 can give consent to work as child labour. Thus the problem begins with the very definition of 'child' within the Indian legal and policy framework. The CRC defines children as persons below the age of 18 years, however different laws stipulate different cut-off ages to define a child. Only the Juvenile Justice (Care and Protection) Act 2000 is in consonance with the Convention. In the absence of a clear definition of a child, it is left to various laws and interpretations. These different age-specifics under different laws not only create a dilemma, but also set the stage for injustice. This is because, whether the same human being is or is not a child depends upon the law that is being invoked in a given case. For example a 15 year old child is not child because she is a wife. And if the same girl is of 16 years and unmarried, she can give consent to sexual intercourse. Moreover, when the laws are in conflict with one another due to diverse definitions, it is but natural a difficult task to decide the 'best interests

of the child'. It is thus necessary that the definition of the term 'child' be brought in conformity with the CRC, viz. "below 18 years of age", by establishing one standard 'age of majority'.

5. Unfriendly population policy

It is estimated that 44 per cent of India's population is children. Though there is no coercive population control policies are not apparently introduced, certain laws are most 'children unfriendly'. In some states the laws prohibit the parents from contesting for offices in local bodies if they have more than two children. Hence, the parents aspiring to political positions are forced to choose between children and politics. There are several instances where the parents preferred political positions to their own children, whom they either disowned or given them n adoption to fit into two children norm qualification. This indicates the vulnerability of child increases by certain laws directly and by certain laws remotely.

6. Education for a few only

First of all successive Governments abdicated the duty of educating all children within first ten years as directed by Directive Principle of State Policy Article 45. Then it wakes up after decades of negligence to give 'Education for all children' by 86th Amendment to the Constitution. By 21A introduced in 86th Constitutional Amendment, the children of age group 0-6, and 15-18 are kept out of scope and out of school. Formal education, thus, is not accessible to all children as per the Constitution which defines age of child in need of education in a different manner. Then it puts the onus of creating conditions on



parents for sending children to school by making it their fundamental duty. What is the fate of poor and marginalized children? It is further abdication of responsibility. The 2009 compulsory education legislation of 2009 perpetuates this lopsided policy and ended up giving money to private schools based on the records showing that some children were given education in their schools.

7. Child Labour promoted and regulated

India has dubious distinction of having more number of working children. And within India, Andhra Pradesh ranks one in employing the children and incidentally AP State stood first in implementation of anti-child labour legislations. The compulsory education law is impractical as it is contradicted by the old legislation National Child Labour (Prohibition and Regulation) Act 1986, which permits child up to 14 yrs to be employed in non-hazardous employments and children above 14 in any employment. It leaves out a large range of activities that children are engaged in, exploited and abused. After much agitation and demand the Government declared that domestic work is 'hazardous'.

On August 1, 2006, the Ministry of Labour added the following occupations to the list of hazardous occupations: domestic servants, workers in *dhabas*, restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres. The notification for this came into effect on 10 October 2006. This is a welcome step but far from adequate. Bonded child labour and other extremely exploitative forms of child labour including slavery, prostitution, drug

trafficking, etc. are other grey areas which require priority attention.

The *ILO Convention No. 182 on the Worst Forms of Child Labour*, which is currently being examined by the Government of India from the point of view of its ratification, also seeks the immediate elimination of these types of child labour.

Girl Children: According to an estimate, two lakh girl children are working in cotton fields out of whom 90 per cent are of 7-14 years age group. Girl children are especially employed to cross-pollinate the cotton crop and for plucking the cotton, which are labour intensive activities of the commercial cultivation of cotton.

Disabled Girl Children: The vulnerability increases, doubles and multiplied when child is girl, poor, belong to weaker section and disabled.

8. Disabled and denied

Though the Disabilities (Equal Protection of Rights and Full Participation) Act, 1995 recognized the rights of disabled persons its implementation has to be examined as the disabled children are denied personal or economic security, health care, education and all basic needs necessary for their growth. Children with mental disability carry even greater stigma. And if the disabled child is a girl, then the discrimination is doubled.

9. Child Trafficking

With globalization the girl child became a commodity of inter country trafficking, which is one of the most heinous manifestations of violence against



children. The gravity and the extent of this crime are increasing day by day. It is not synonymous with prostitution but serious crime than that.

10. Hostile family and inadequate Adoption mechanisms

The jurists and sociologists recognized that the family is best place for child. But poverty conditions force the child to live in hostile atmosphere within family. The home itself is becoming unsafe and problematic for child because of unprecedented conditions such as domestic violence and disputing spouses. Children are abandoned for variety of reasons. Till 2000 the Government has not created a strong legal frame for ensuring alternative foster care and adoption. Adoption is one of the best and appropriate forms of alternative family care, if natural parents abandon in compelling circumstances as explained in first part of this article. Indeed, it is the only way to break the mindset of institutional care for children. There is no point in prosecuting parents for abandoning under IPC. Orphaned, abandoned, neglected and abused children can be adopted. In-country and then inter-country adoptions are the best methods if certain norms and rules of procedural formalities are followed. The Juvenile Justice (Care and Protection of Children) Act, 2000 provided for secular adoption. 2006 made it clearer and processes are defined.

Earlier the Adoption of children was determined by religion of the adoptive parents or the child when religion is known. Only Hindus, Jains, Buddhists and Sikhs can adopt children. The personal laws of other religions - Muslims, Parsis, and Jews did not allow

it. Even as it existed for Hindus, the law has serious flaws discriminating against married women. It allows only married men to adopt. Further, it only allowed for adoption of children of opposite genders.

Besides the above mentioned ten vulnerabilities, the disaster affected children are a different class of neglected one. Thousands of children are homeless or living in inadequate living conditions. Thousands of others are displaced in the name of development and progress. Their land is acquired for 'public purpose', without properly compensating and adequately rehabilitating. Thousands of others are de-housed as a result of natural calamities - the floods, cyclones, earthquakes that have come to become almost a regular feature in our country. While whole communities are affected, children are even more in every such state made disaster and natural disaster. An estimated 3.3 million children were affected by the super-cyclone that hit the coastal districts of Orissa on October 29, 1999. But NGOs reported that for five days after the cyclone, no special attention was focused on the needs of children. There was very little information on where the children were, where they were going, or being taken. So far, none could estimate how many died in earthquake that hit Gujarat in January 2000.

Yet we can say we have a better legal frame today, compared to worst legal situation a decade ago, with compulsory education and adoption possible and child marriage or child labour could be prohibited at least by law to some extent.



However law is not that effective in providing children a real participation right though India ratified the Child Rights Convention. With that ratification children's rights to participation began gaining formal recognition. Participation is still not internalized and widely accepted. The JJ Act, Article 21A, Compulsory Education, Child Marriage Prohibition, Protection of women from Domestic Violence, etc improved the legal frame. Child rights activists are right saying that the children were never a priority for the political parties as they (children) are neither voters nor a vote bank or a strong lobby that could influence the manifestos before elections and policies after elections. When 44 per cent of children are not voters their issues are not priority for any party or Government.

Part IV: Problems of Policy and Systems

From 1974 till date, there has been a gradual shift in approach towards children from a needs-based to a rights-based approach. The legal and moral obligation of state is recognized. It is also being recognized that the children are holders of their own rights. Adults or Government need not hold any authority over the children claiming rights on their behalf. However there is a need to translate this change into actual programming, which is largely 'welfare' oriented. It is not the mercy of the government the children are needed. It is the constitutional obligation of government to create conducive atmosphere where the rights of children are realized as a matter of right, not grace.

The paradigm shift from needs approach to rights approach, welfare to development, institutional and residential care to non-institutional family based alternative programs, from custodial care institutions to holistic development through quality child care in institutions, from segregation and isolation from society to inclusion and mainstreaming in society, from child being a recipient or beneficiary of service to be a participant and partner in his/her own development and decisions that affect them. The children have the right the right to be protected from all exploitative and vulnerable situations. A child may need legal help and protection. Resisting legal action when a child needs it the most is a common mistake all of us often tend to make.

Primarily the Government has to address the issue of educational pressures mounting up on the school going children and regulate the corporate education business. Though there are some general powers with Education Department of the states, there is no effective monitoring and regulation of these hi-fi or five star, high cost education shops which spread the craze for ranks among the middle class and market seats coaching centers exploiting that craze.

The Juvenile Justice Act is comprehensive and takes us near to the objectives of Child Rights Convention. In the absence of organizational support, goals get by this Act cannot be achieved. Needed systems are not put in place. For instance, the law envisages one observation home where the child in need of care and protection to be produced. But there are only six homes in entire state of Andhra Pradesh, which



created several vulnerabilities. The escorts with child have to cross three or four districts to reach the Observation Home. No funds are provided for it. The time of travel it self is confinement. There is risk of child escaping or facing an accident or there could be any other issue which affects the peace of the child. Child who is already in need of care and protection becomes victim of the law made for him. Six Homes cannot accommodate all the children who are in need of care.

No special juvenile police unit

The children who are in conflict with law are dealt by the regular police who do not have any time or motivation to understand the fact that child is a victim and not a criminal. Due to mindset and circumstances, this police who is always under pressure of work, stress and tension cannot deal with these sensitive children in the way they are expected to. A provision to create a special Juvenile Police Unit remained on paper or where a unit is created, it was not adequate and equipped. We need to sensitize police and sensitized police should be appointed to deal children with care and caution. Why are not the Special Juvenile Police Units created? There is dire need for police to understand the special features of juvenile justice, because of lack of this knowledge, police are producing the juveniles who were caught in 'trafficking' before Juvenile Justice Boards. Now the question is whether girls are victims of trafficking or accused of that crime? As they were being produced before Board, police assume that they are children in conflict with law, which is wrong. They are in fact child in need of care and protection. If the police do not whether

child is victim or offender, how can they perform duties under Juvenile Justice Act?

The police who take children into custody are rarely presenting them before the Juvenile Justice Board. If such children are put to trial in general courts along with crude and rotten criminals by a police who are rigidified in dealing with those criminals, the purpose of the Juvenile Justice will be surely defeated. As the systems are not put in place in full-fledged manner, there are extra ordinary delays in holding inquiry into the allegations against the children. It is yet another defeat to objectives of the law. Besides these systemic issues there are functional problems also. Neither the Act nor the executive provide for maintenance of children of disputed or separated couples. Juvenile Justice is a good law without structural supports and adequate finances.

Child Marriage Prohibition: The improved child marriage prohibition law is strong enough to impose punishments on those who performed, promoted and assisted child marriage. It created new offences, expanded list of offenders to include those who abet and facilitate child marriage, increased quantum of punishment. But the pertinent question is none is punished so far for those listed offences. Everyone knows the incidence of child marriages but none complain and none prosecuted. There is no fear of this law.

This law envisages creation of prohibition officers in each village. The executive government has redesignated Anganvadi workers as prohibition officers. Do they have any support or capacity to stop child marriages? Why



not head masters, teachers or other officers of village are prohibition officers?

There shall be symbiosis between Child Labour prohibition and Child Education and Child Marriage prohibition and girl child protection envisaged under different legislations. Age of consent for a girl child to sexual intercourse should be 18 and any intercourse with child below 18 should be criminalized to secure the girl child.

Every new enactment should create its own enforcement wing and the government which wanted that law should also make additional budget provision for it, which should form as financial statement attached to the bill when it is introduced in legislature. Without sufficient finances, the law however effectively drafted, will be an ineffective piece of paper. New enactments for Juvenile Justice, Compulsory Education, child marriage prohibition etc should be well crafted academic pieces of legislative documentation, without social utility. The purpose of law is deliberately defeated by non-provision of systems, infrastructure and finances.

Talking about legal frame might be necessary but legal frame alone is not enough, it is just one aspect of administration in tackling vulnerabilities

of children. An enabling policy, Committed Government, honest administrative wing, active social network, and responsive police and responsible prosecution is needed to secure rights of children. There should be synchronization between legal aid service wing, civil society, protection officers and prohibition officers, service providers, and other stake holders.

There is no time, it is very urgent. We need to reframe our policy as soon as possible. We need to create better institutions and mechanisms under JJ Act and other Acts. Required changes should be made fast. Everyone and anyone can wait, but a child cannot wait. Every minute lost means loss of childhood for him. Our childhood is a sweet memory. Can we ensure the same to our progeny? Are we discharging our inter-generational responsibility towards the next generation?

Problem of humanity: *The photo that captured tragic scene of a child who died in Syria sea has moved the world and drawn the attention to the burning issue of migration of lakhs of people towards safer place running away from the battle fields. The en-mass violation of human rights became a discussion point with this photograph.*



Tragedy of the tiny boy who symbolizes the desperation of thousands: Body of drowned Syrian child is washed up on Turkish beach after his family tried to reach Europe. 2.9.2015

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⁴ Source: A Selvaraj, TNN | Feb 12, 2012, 03.22AM IST

⁵ Kusth Asha Deep Foundation, Writ Petition (Civil) No. 8112/2007 against Union of India and Others

⁶ <http://www.unicef.org/crc/>

⁷ <http://www.google.com/url?sa=D&q=http://www.indg.in/primary-education/policiesandschemes/the-national-policy-on-children-1974>

⁸ Marckx v. Belgium (application No. 6833/74) was a case decided by the [European Court of Human Rights](#) in 1979, Facts of this case are: Ms. Paula Marckx, being unmarried, gave birth to a daughter in 1973. Under Belgian law, no legal bond between an unmarried mother and her child resulted from the mere fact of birth. To create the bond, the mother had either to recognise maternity in specific proceedings or to adopt the child. In both cases, the child's inheritance rights remained less than those a child born in marriage received automatically.

⁹ **Tyrer v. the United Kingdom** (application No. 5856/72) was a case decided by the [European Court of Human Rights](#) in 1978. Facts: Mr. Tyrer, then aged 15, was [birched](#) in 1972 in the [Isle of Man](#), according to local juvenile court's sentence for unlawful assault occasioning actual bodily harm. Birching was conducted by policemen in private, in presence of Tyrer's father and a doctor; Tyrer was made to take down his trousers and underpants and bend over a table.

¹⁰ http://www.unicef.org/crc/index_30204.html

¹¹ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

¹² AIR (1984) SC 469, AIR (1986) SC 276, AIR (1987) SC 232

¹³ AIR (1986) SC 1883, AIR (1988) SC 2211



¹⁴ JT 1990 SC 263

¹⁵ 1990 (3) SCC 318

¹⁶ 1993 (1) SC 645

¹⁷ 1997 (8) SCC 114

¹⁸ (1999) 2 SC 228

¹⁹ AIR 2000 SC 301

²⁰ Section 3 (1), PCMA, 2006

²¹ Section 3(3), PCMA 2006

²² Determining the age of child: A controversial approach, by Debdatta Das, National Law Institute University Bhopal, submitted to Bureau of Police Research & Development, p9.