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CRITICAL ANALYSIS OF CHILD RIGHTS CONVENTION W.R.T INDIA'S SCENARIO

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Abstract “The true character of a society is revealed in how it treats its children.”

India being the signatory country of UNCRC has relevantly recognised the rights of children. The Constitution of India also guarantees basic rights to the children such as Right to health, education, food, shelter, etc. However, despite the existence of many legal provisions, the vulnerability and exploitation of children cannot be undermined. The height of exploiting and harassing children has reached another level in India but there are many strict provisions made for the protection of children. This paper attempts to provide how important it is to protect the children's rights and also how CRC is able to secure and provide the rights for the protection of the children from being exploited. This paper will also attempt to locate the status of Indian children at the current level and shows how CRC has been able to accelerate the growth of children for its development.

INTRODUCTION

Children rights are one of the most important rights which needs to be protected in every country. Children are one of the innocent pieces of humans on the planet which should be protected from birth but for some children, their childhood has been exploited and abused. Right from the childhood, plenty number of problems have been faced by them such as hunger, homelessness, sexual harassment, work in harmful conditions, etc. A child should not live like this and must be protected and preserved. Children have the right to survive,

protect from all harmful diseases and infections, develop their skills and personality and participate in decisions that impact their life.¹ Children are provided with certain inalienable rights since they are born. Our country, India, works on the principle of justice, liberty, equality and fraternity and also aims at protecting the rights of children from getting exploited. Many laws have been formulated in India which not only protect them from exploitation but also provide them with means of good food, shelter and health facilities. The UN General Assembly adopted the Convention on Rights of Children which is the first international treaty that basically protects and defines the basic rights of children.²

EVOLUTION OF CONVENTION ON RIGHTS OF CHILD

By the beginning of the 20th century, the world started to realise the importance of children's rights. In the past, the children were treated extremely differently. They were prone to exploitation and abasement. People used to make them work for hours without any rest and they were also sexually harassed, not given proper food and shelter to live. In 1948, after the declaration of Human rights, the UN started to think about the protection of child rights. In 1959, the organisation issued certain points of the Universal Declaration of the Rights of the Child, recognising that children are an important part of the society. Since, it was a declaration so it couldn't be mandatory for the country to follow it. So, in 1978, the polish government made a proposal to the UN for formulation of the model on the convention of rights of the children. It took 10 long years to prepare a draft on CRC. On 20th November, 1989, the CRC was finally accepted and ratified by the countries and this time it was mandatory for all the countries to accept it.³ This convention is ratified by 195 countries and is worldwide accepted. This convention consists of 54 articles and is based on 4 principles which are: 1) Survival and Development of child, 2) work in the best interest of the child, 3) Equality and Non-discrimination, 4) Respect for views of Child.

IMPORTANCE AND NEED FOR CRC

The United Nations Convention on Rights of Child (UNCRC) is an important international treaty which was formed to provide the cultural, political, civil and social rights to the children irrespective of their race, ethnicity, religion, colour or nationality. The basic purpose for bringing this convention was to provide those rights to the children which they were deprived of. This convention has inspired India to enact a number of legislations for the betterment of the children. Some of the Acts which have been implemented and came up

¹ *Child rights importance*, CRY UK, available at www.uk.cry.org (Sept 23, 6:45pm)

² Dinesh Kumar, *Protection of children*, Legal service India, available at www.legalserviceindia.com (Sept 23, 6:58pm)

³ *History of CRC*, ProFuturo, available at www.profuturo.education (Sept 23, 9:10pm)

because of this convention are Child Marriage Prohibition Act, 2006, The Right of Children to free and compulsory Education Act, 2009, Right of children to protect against Sexual offences Act, 2012.

India is the country where there is a major need for enactment of such laws as the population of children is huge. By formulation of this convention, it has aimed at providing some rights to the children but still many problems are still prevalent. Violence among children has still remain a major issue. The rate of sexual offences and violence has considerably increased in last 5 years. More than 25% cases were reported under the Protection of Children from sexual offences and which includes child rape and pornography.⁴

Some major problems which are faced by children in India are:

- 1) Child trafficking
- 2) Child labour
- 3) Child marriage
- 4) Violence and sexual harassment
- 5) Children without parental care
- 6) Children with disabilities⁵

With the help of the CRC, there have been some strict changes in our Constitution which have provided and looked upon the importance of the rights of children as the duty of the nation to protect them. Many laws have been implemented for the betterment of children for their living and growth.

IMPLEMENTATION OF CRC IN INDIA

India ratified the UNCRC in 1992, and pledged to achieve the rights of children in all possible ways. India aimed to follow the fundamental principles of UNCRC which are:

- Right to Survival – to life, health, nutrition, name, nationality
- Right to Development – to education, care, leisure, recreation, cultural activities
- Right to Protection – from exploitation, abuse, neglect
- Right to Participation – to expression, information, thought, religion⁶

Child Relief and You (CRY) is a non-governmental organisation which took the statistics report of the position of children in India. Since, the population in the country amounts to 1/3rd of children still the problems have been ignored. The report prepared by CRY has shown us the worst case that is not even known to people.

⁴ *Importance of UNCRC*, Save the children, available at www.savethechildren.in (Sept 24, 3:05pm)

⁵ Child Protection rights, available at www.online-learning.harvard.edu (Sept 24, 9:23pm)

⁶ About Child Rights, available at www.cry.org (Sept 25, 1:35pm)

1) STATISTICS OF CHILDREN IN INDIA⁷

There are 472 million children who are below the age of 18 years. This amounts to 39% of the total population in the country. The following are the details:

a) **EDUCATION**

- As per Census 2011, 1 out of 4 children are forced to drop out of the school due to uncertain reasons. About 99 million children are deprived of education.
- As per CRC report, many researchers have travelled across the country and found out the reasons for dropping students out of the school. Some reasons they found was that the financial position was very poor to support education, parents were not that physically fit to run the family so the burden lies on their children. In rural areas, some people still do not know about the importance of education and they don't send them to school.⁸

b) **CHILD ABUSE AND EXPLOITATION**

- The position of children working in India below the age of 18 years is terrific. In some parts of the country more than 50% of the children are involved in child labour. There are 10.13 million child labourers between the ages of 5 to 14 years in India. Child trafficking, kidnapping and abduction are the major crimes which take place in India. As per the report prepared by National Crime Record Bureau (2016), about 150 children are found missing each day.

c) **HEALTH AND NUTRITION**

- Most of the children suffer from lack of food in India. Many children die out of hunger or due to malnutrition. About 19.8 million below the age of 6 years are undernourished. Very less percent of children are able to receive an adequate diet in the country which amounts to only 9.6% of children between 6-23 months. During pregnancy, not all women are given proper care and advice for child birth. Most of the children die during birth due to lack of facilities. 21% of the total births in India are usually home births where the woman is not even taken to the hospital.

⁷ Statistics of children, available at www.cry.org (Sept 25, 1:46pm)

⁸ Child rights, available at www.online-learning.harvard.edu (Sept 25, 2:00pm)

d) GIRL CHILD

- Girl child marriages are still prevalent in India. As per the report of District Information system for education, 42% of married women in India were married when they were children. The rate is considerably high, about 45 lakh girls who are married under the age of 15 years are also mothers now and hold at least 1 child.
- As per the 2017 statistics, 27% of girls in India are married before their 18th birthday and 7% are married before the age of 15. According to UNICEF report, India has the highest and the most child brides in the world – 15,509,000.⁹

PROBLEMS AND IMPACT OF CRC IN INDIA

Since, a lot of problems are faced by women and children in India, so the Child Rights Convention aims at providing relief to them. The Constitution of India provides and creates special legislations for women and children. India ratified CRC in 1992 and first time CRC invoked for the enactment of laws in India in 2000 by bringing Juvenile Justice (care and protection) Act, 2000.

JUVENILE JUSTICE, CARE AND PROTECTION

CRC has implemented various provisions extensively for the protection of juveniles in case of any crimes. This has been implemented and brought about changes in the domestic law and also at the international level. The Juvenile Justice (care and protection) Act, 2000 deals with two types of categories of children: those “in conflict with the law” (CICL) and ‘Children in need of care and protection’ (CNCP). The need for bringing CNCP was because the children are too immature to understand the consequences of the act and also they are too sensible to come in conflict with law so there is the need to protect and care for them. Child welfare committee has been formulated for taking care of the children who are below the age of 18 years of age and who indulge in heinous offences.

In case of *Brindavan Sharma v. State*¹⁰ The Delhi H.C held that the children are the victims to the crime committed by their parents and leaving them in a destitute condition and no place for them to live in. The court said that it is necessary to protect the children financially and secure them because they are at fault because of their parents' deeds. As such the question arose before the court that, is it a State's duty to owe any responsibility towards children? The court said that it cannot behave helplessly when it comes to children and

⁹ Girls not brides, available at www.girlsnotbrides.org (Sept 25, 2:17pm)

¹⁰ AIR 2002

has to take certain measures for securing them, the court cited CRC specifically the articles 2(2), 8(1), 12(1), 12(2) and 39 along with the international human rights instruments and Indian Constitution. It held that Article 21 and article 29 of constitution plays a major role and the courts are duty bound to recognise the principles and responsibilities as per CRC 1989.¹¹

CHILDREN IN CONFLICT WITH THE LAW

The CRC has invoked a serious issue related to the minimum age responsibility to be set for the crime committed by the people. The question arises as to who will be a child and who will be treated as a juvenile or adult when the offence has been committed.

The matter related to the Minimum age of criminal responsibility (MACR) has always been an important question. The question is always raised that “what should determine whether juveniles are subject to juvenile proceedings or to the rules applicable to the adult criminals-when they were apprehended or when they committed the crime?”

As per Article 40(3) of CRC, state parties are encouraged to determine a minimum age where children will not be guilty of any criminal offence. The Committee of CRC presumes that the age of 12 years shall not be approved internationally. However, at the same time it stresses that any country shall not lower down the minimum age below 12 years. Many countries have kept the age of criminal responsibility from 14 to 18 years. The Rule 4 of the Beijing Rules recommends that the countries should follow the principle of ‘Doli Incapax’ that is the immaturity of the child to commit the crime. The committee of CRC states that the children who are over the age of minimum criminal responsibility and are also in conflict with the law and have a lesser capability to understand the pros and cons of the situation and they differ from the mental and psychological factors, so they should be sent to rehabilitation centre so that they can gain the ability to judge and decide what is right and wrong.¹²

SEXUAL HARASSMENT OF CHILDREN

A child is said to be sexually abused when he is forced to do sexual activities. Sexual abuse can happen anywhere in the world be it physical or through the mode of internet. India is a country which is prone to

¹¹ Vol I, Enakshi Ganguly, Children’s right in litigation (Ton Liefwaard et al, 2015)

¹² Penal reformation, Beijing rules, available at https://cdn.penalreform.org/wp-content/uploads/2013/05/justice-for-children-briefing-4-v6-web_0.pdf (Sept 30, 2:30pm)

sexual harassment and abuse of children. Child marriage is said to be one of the major sexual abuse that happens with girls in India. The effect of child sexual abuse can result into lot of problems such as depression, anxiety, mental disorders, trauma, etc. About 30% offences are committed by the relatives of the victims and most happen with the girls. It was reported about 14-40% of girls are harassed every day and only 6% of the boys are prone to such sexual activities. The number is rising day by day and a lot of acts have also been passed and certain strict measures are also taken against the culprit.

Article 19 of CRC also states about the violence that occurs among children. It says that children are the prey to the abuses at the hands of the adults and sometimes, children in frustration try to harm themselves. Article 21 and 22 of CRC refers to mental and physical violence that is faced by children and it includes all types of violence such as physically bullying, torturing them, prone to physical and verbal abuses, sometimes put in solitary confinement for days without proper food and water.¹³

To stop and prevent the sexual offences against children, the Government made a special law, The Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The POCSO Act, 2012 is a comprehensive law which was implemented to provide protection to children from the offences of sexual assault, sexual harassment and pornography to name a few. This Act incorporated child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts so that speedy justice and trial can be conducted. The age for protecting children has been kept at 18 years under this act. This act lays down that strict action shall be taken against the offender in case of any offence has been committed and also it lays down that it is mandatory to report the cases of children involve in sexual harassment. This Act also lays down punishments for crime against children that may extend up to life imprisonment and also fine as punishment which may be imposed in case of aggravated forms of sexual abuses or torture.¹⁴

CHILD MARRIAGE

This has been always considered one of the violent activity which is still prevalent and prominent in many parts of the country. Child marriage means a formal or informal union of a male and female under the legal age i.e. below the age of 18 and 21 years is considered as child marriage. When a female child is married to another person, she faces a lot more

¹³ CRC, *UNICEF*, available at www.unicef-irc.org (30 Sept, 9:30pm)

¹⁴ POCSO Act, *The Financial Express*, available at www.financialexpress.com (Oct 2, 4:00pm)

problems than anyone. Married girls always feel disempowered, as they have little freedom to do anything. They are deprived of their fundamental rights and most importantly the right to health, education and liberty.

They have no access to anything and are deprived of necessary resources. Girl brides are not only physically fit but also mentally weak to accept the other family as theirs and also to become a wife or mother at such a young age. They face more risks of experiencing dangerous and complicated pregnancy and child birth, and also in some cases they contract HIV/AIDS and also suffer from domestic violence. With little access to education and economic opportunities, they and their families suffer from poverty.¹⁵ The child marriage is always used as a weapon in the family at the time of poverty crisis. The parents of the girl give their daughter in marriage at early childhood so as to reduce the burden of pressure of also providing a living.

Child marriage violates various international Human Rights and including Article 16(2) of Universal Declaration of Human Rights (UDHR) requires “free and full consent of spouses to marriage”. There is also a violation of Article 16 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This article states that every woman and girl has the right to choose their spouses and to enter into marriage with their free consent and will. Since India is a signatory country to the Convention on Rights of the Child (CRC), it also violates certain provisions of CRC, including the right of children not to be separated from their parents against their will. The State is obliged to take certain actions under CRC to control the traditional norms and customs.¹⁶

While considering these problems, Child marriage Restraint Act, 2006 came up which has many positive changes and it attempted to address the shortcomings of the previous Act (Child marriage restraint Act, 1929). This Act defines that a child above the age of 18 years in girls and above the age of 21 years in boys will be considered as the legal age to get married in India. This Act also criminalises the child marriage by giving punishment up to 2 years of imprisonment and up to 1 lakh rupee fine or both.

¹⁵ *Impact of child marriage*, Girls not brides, available at www.girlsnotbrides.org (Oct 2, 4:24pm)

¹⁶ Akhila Kolisetty, *Child Marriage in India*, Intlawgrrls, available at www.ilg2.org (Oct 2, 4:43pm)

FACTORS AND DIFFICULTIES IN IMPEDING CRC

With the help of Child Rights Convention (CRC), India was able to implement many laws which are benefitting the children at large. Many strict rules and penalties have been made in case of violation of these rights. But, since India has a large population of children in the country, it also became a challenging situation for CRC to bring rights for the children.

The Committee of CRC believes that meeting the needs of rights of children in India brings out enormous challenges not only economically or socially but also in preserving the necessary resources required for its implementation. The committee also feels since the country is affected by poverty at large and it impedes and has impact on structural adjustments, and natural disasters are factors which represent serious difficulties in the fulfilment of all of the State party's obligations under the Convention. Given such a diverse and multicultural society, the Committee further notes that the existence of traditional customs (i.e. the caste system), and societal attitudes (e.g. towards tribal groups) is an obstacle to efforts to combat discrimination, poverty, illiteracy, child labour, child sexual exploitation, and children living and/or working on the streets.¹⁷ The committee notes that sufficient efforts have been made for the protection of women and children in the country but it recommends that the country should pursue efforts to ensure full compatibility with the Convention, taking in consideration the general principles of the convention. It also feels certain insufficient efforts have been made in connection with the legislature in working and upgrading the condition of children in slum areas, dwelling, tribes, etc.

So thus, the committee is working hard towards bringing a good environment for children in India and taking all measures to give equal rights and opportunities to children in all aspects.

CONCLUSION

By looking at the scenario condition, we came to this conclusion that the state of children in India is not satisfactory and even though many legal provisions have been made, there will be no use of them if there will be no proper implantation of those laws. The “Right of protecting agency” is important in developing rights but the “Right of Implementing agency” has the more important role in giving those rights to children. The level of child morality, child labour, child marriage, child sexual abuse are gross violation of child rights. The

¹⁷ *Factors and difficulties of convention*, Human Rights library, available at <http://hrlibrary.umn.edu/crc/india2000.html> (Oct 3, 2:33pm)

reasons are many like sometimes due to weak government the laws are unable to implement or sometimes due to scarcity of economic resources. Though, the efforts made by the Committee of CRC in providing and enacting many laws in India for children are commendable. It continuously aims at bringing a better version of children in India and provides all means of sources to them which they are deprived of.

