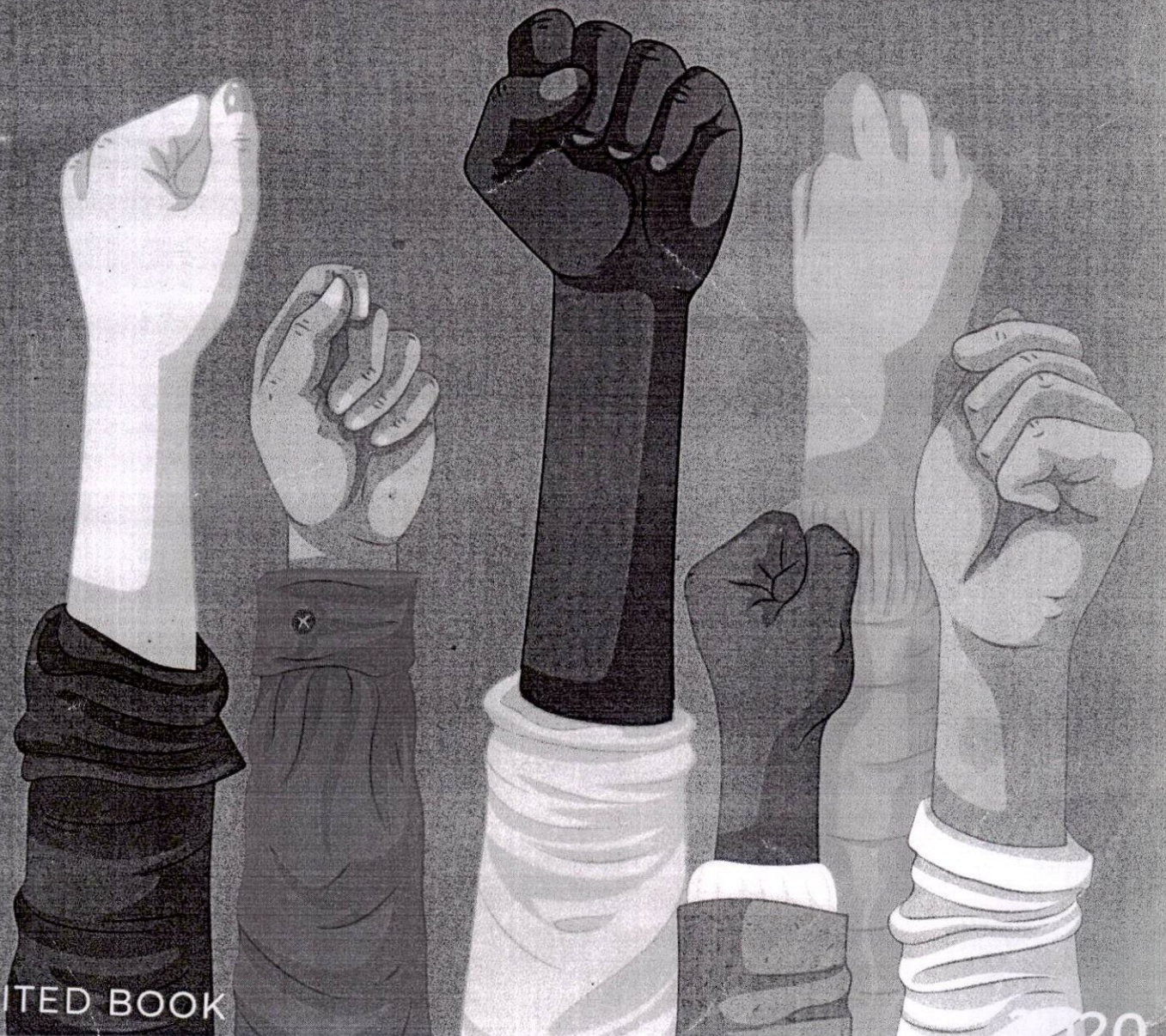


PROVINCES OF HUMAN RIGHTS



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PROVINCES OF HUMAN RIGHTS

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PREVENTION OF CHILD ABUSE UNDER INTERNATIONAL LAW – A HUMAN RIGHTS PERSPECTIVE

Dr. Ashwini V. Ingole¹

Abstract

No specific standards for protecting the life of children were provided by the industrialized countries until 20th Century. Increasing understanding of the injustices caused to children gave rise to a movement for better protection of the children. Lot of factors affected the children. The impact of these changes on children was devastating. Further, the effects of sickness, undernourishment and paucity threatened the future of youngsters and subsequently the prospects of the civilizations. This situation sought the attention of policy makers and highlighted the need of their interference in realizing the need to protect the tender age of children and their childhood. The United Nation's Security Council is pro-active in matters relating to child rights. Every year it delegates to a specific group of people, the task to investigate into the most serious of violations of child rights in times of war or armed conflicts. Some of the heinous war crimes against children include sexual violence, maiming and killing of children, the recruitment of them into armed groups etc. Many children still face a gross disregard and violation of their basic rights. Various reports have depicted the stark reality that in most situations, it is the schools and other educational institutions that are targeted or worse bombed by the perpetrators of violence.

"All human beings are born free and equal in dignity and rights."²

A child is the apt personification of purity and innocence. Child means a person who is below the age of 18 years³. In the all-round development of a child, both nature and nurture play a vital role. It is therefore imperative that children are given a positive and care free environment to develop so that they can grow into good and responsible human beings. Every child has some basic needs that must be adhered to, for his/her proper functioning. If one or more of these necessities are not addressed, it can prove to be detrimental to their growth.

Young persons and children are entitled for the same human rights like adults and also special rights which recognize their specific requirements. Children should not be treated as parents.

¹ Assistant Professor, MMM's Shankarro Chavan Lal College, Pune.

² Article 1, Universal Declaration of Human Rights, 1948

³ Section 2(12), the Juvenile Justice (Care And Protection Of Children) Act, 2015

Further they are not the stranded objects of offerings. They are human beings and have their own rights. Since children are the wealth and assets of any country, it is our responsibility to provide a healthy environment which will lead to their growth as civilized beings. They will grow up as socially active, physically fit and psychologically sensible holders of the society.

Evolution of Child Rights

During early 20th century, children used to work along with adults in unsafe and unhygienic conditions of work. No specific standards for protecting the life of children were provided by the industrialized countries. Increasing understanding of the injustices caused to children gave rise to a movement for better protection of the children. Also the change of the family arrangement, weather change, and globalization, mass relocation of societies, digitalization, and unstable employment methods strongly affected the children. The impact of these changes on children was devastating. Further, the effects of sickness, undernourishment and paucity threatened the future of youngsters and subsequently the prospects of the civilizations. This situation sought the attention of policy makers and highlighted the need of their interference in realizing the need to protect the tender age of children and their childhood.

The timeline of evolution child rights is as follows⁴:-

Year	Development
1924	Adoption of the Geneva Declaration on the Rights of the Child, by the League of Nations. It is drafted by Eglantyne Jebb, who is founder of the "Save the Children-Fund". This Declaration articulated that <i>"all people owe children the right to: means for their development; special help in times of need; priority for relief; economic freedom and protection from exploitation; and an upbringing that instils social consciousness and duty."</i> ⁵
1946	Establishment of the International Children's Emergency Fund, UNICEF, by the UN General Assembly which emphasized on children throughout the world.
1948	Passing of the Universal Declaration of Human Rights (UDHR) by the UN

⁴ <https://www.unicef.org/child-rights-convention/history-child-rights>

⁵ Ibid

	<p>General Assembly.</p> <p>Article 25 of UDHR provides, "<i>Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.</i>"⁶</p>
1959	<p>Adoption of the Declaration of the Rights of the Child, by the UN General Assembly. It recognized various rights of children including children's rights to play, education and health care etc.</p>
1966	<p>Acceptance of two important covenants by United Nations i.e. 'International Covenant on Civil and Political Rights'⁷ and 'International Covenant on Economic, Social and Cultural Rights'.⁸</p> <p>With these covenants Member States of UN promised "to uphold equal rights – including education and protection for all children."</p>
1968	<p>Organization of the 'International Conference on Human Rights' by UN, for evaluating the development made by countries after adoption of UDHR. Future agenda and national commitments were bolstered towards protection of human rights.</p>
1973	<p>Adoption of Convention 138 by the International Labor Organization providing 18 years as the minimum age for undertaking any hazardous work.</p>
1974	<p>UN General Assembly insisted for observing 'the Declaration on the Protection of Women and Children in Emergency and Armed Conflict' which prohibited attacks against or arrest of civilian women and children.</p>
1978	<p>The Commission on Human Rights puts forth a draft of a Convention on the Rights of the Child for consideration by a working group of Member States, agencies and intergovernmental and non-governmental organizations.</p>
1979	<p>UN General Assembly declared 1979 as the International Year of the Child where UNICEF played an important role.</p>
1985	<p>The United Nations Standard Minimum Rules for the Administration of Juvenile</p>

⁶ <https://www.un.org/en/universal-declaration-human-rights/>

⁷ Articles 14, 18, 23 and 24 of International Covenant on Civil and Political Rights, 1966 talks about Rights of children.

⁸ Articles 10, 12 and 13 of International Covenant on Economic, Social and Cultural Rights talks about Rights of children.

	Justice provided the principles of a justice system promoting the greatest welfares of the children which included education and social services.
1989	Adoption of the Convention on the Rights of the Child by the United Nations General Assembly - a landmark achievement for human rights, recognizing the roles of children as social, economic, political, civil and cultural actors, guarantying minimum standards for defending the rights of children in all capacities.
1990	Organization of the World Summit for Children at New York.
1991	Experts from UNICEF, Save the Children, Defence for Children International and other organizations discussed the data collected from the recording process of the Convention on the Rights of the Child.
1999	Adoption of the Worst Forms of Child Labour Convention by the International Labour Organization (ILO).
2000	Adoption of two optional protocols by the United Nations General Assembly to the 1989 Convention on the Rights of the Child which obligated State Parties to prevent children from partaking in hostilities during armed conflict.
2002	Child delegates addressed the United Nations Special Session on Children for the first time.
2006	Publication of Manual for the Measurement of Juvenile Justice Indicators with the United Nations Office on Drugs and Crime by UNICEF which enabled governments to evaluate the situation of their juvenile justice systems and make necessary reforms.
2010	Issuance of the Status of the Convention on the Rights of the Child by the United Nations Secretary-General.
2011	Adoption of a new Optional Protocol to the 1989 Convention on the Rights of the Child providing communications procedure and investigations.
2015	Ratification of Convention by Somalia and South Sudan. The Convention became the most extensively ratified international instrument with 196 States excluding United States.

Violation of Rights of Children and Indian Law

In a country like India, where a major chunk of the population is below the poverty line, it is very difficult to meet all the requirements that a child has. There are thus, innumerable social, economic and psychological causes that compel a child to deviate from the right path and this in the simplest of words is what delinquency is. The society at large is affected by it and this deviating from the set standards of society or willful illegal behavior by young children is termed as 'juvenile delinquency'.⁹

The term 'juvenile delinquency' has been interpreted in different manners. Generally it talks about a variety of conduct of children and adolescents not approved by society at large. This behavior may attract punishment, admonishment, corrective or preventive measures in the interest of general public. Therefore we need to clearly understand the term child and juvenile and a classification between them.¹⁰

India houses the maximum number of children in the world and according to statistics about 35-40% of her population comprises of children below the age of 18 years. Juvenile Delinquency is one of the biggest social problems that India is faced with today. The crime bureaus are showing a massive hike in numbers of juvenile delinquents and this is a very sorry state of affairs. The problem is not in the children but is attributable to other factors like abuse, violence, and exploitation of children. These must therefore, be discussed at length for a comprehensive understanding of the whole issue and the main aim of the paper is exactly so.

The children's non-profit organization CHILDLINE defines the phrase "a child in conflict with law" as one referring to any person who is below the age of majority, i.e., who is below the age of 18 years and is responsible for the commission of a crime or is suspected to have committed a crime and as a consequence of either of the two situations comes in contact with the legal system of the country to which he/she belongs.

There are a wide variety of issues that come into light when both the national as well as the international perspectives regarding children in conflict with law are taken into account. All over the world countries have come up with their own juvenile justice systems to deal with their child offenders. In India all three organs namely- the legislature, the executive and the judiciary were compelled by the infamous Nirbhaya case, to come up with certain reforms to the already

⁹ Ruth Cavan, *Delinquency and Crime Cross-Cultural Perspective*, J. B. Lippincott Co. Philadelphia, 1968.

¹⁰ Gus Martin, "Juvenile Justice Process and System", by Sage publications, New Delhi, London, 2005

existing juvenile justice system. There were many deliberations on the issues surrounding the system, where along with social implications of delinquency the various legalities governing juveniles were also discussed.

The problem is that, in most of the cases the children commit very minor offences and at times it is not even the children themselves but adults who use them as scapegoats and coerce them into committing offences. More often than not, they are detained by officials and kept in institutions where they are denied their basic rights such as their right to education and to primary medical care due to which many children lose their lives every year. There are many socio-economic factors that play a compelling role in converting young children into juvenile delinquents such as poverty, lack of proper education or/and in most cases no education. Moreover, such children are targeted by the wrong elements in the society and forced into beggary, prostitution, drug dealing and so on and so forth. The factors mentioned above transform children completely. They not only interfere with their righteous functioning in the society but also attach the label of being in conflict with law to them.

Moving on, the next issue at hand, that must be dealt with extensively, is the issue of **Child Abuse on the Internet**. In the recent years, there has been a lot of awareness pertaining to exploitation and child sexual abuse (CSA) on the internet. However, despite the awareness and concern over this widespread problem, very few cases are reported and even if they do most of those get completely brushed under the carpet. Therefore, in this case, a mere formulation of policies will do no good, effective implementation of them is very important. In the year 2012, UNICEF had conducted a research that showed that about a quarter of all the children in the world were affected by various kinds of violence and abuse.¹¹

All young children have the right to grow fearlessly in all kinds of environment, be it online or offline and are entitled to protection from exploitation and abuse. Associations and organizations like UNICEF and ASEAN have come up with various programs like the *Global Programme to Build Capacity to Tackle Online Child Sexual Exploitation and the Regional Plan of Action on the Elimination of Violence Against Children*,¹² to develop various kinds of preventive measures so as to ensure that children are protected from all kinds of online sexual abuse and exploitation.

¹¹ https://www.unicef.org/publications/index_69639.html

¹² Available at https://www.unicef.org/protection/files/UNICEF_VAC_ToC_WEB_101117.pdf

What these seek to provide, is a child-friendly platform, free from any kind of dangers and negativities.

Although such initiatives and steps are taken by the concerned agencies, it has been found out that time and again, they prove to be inadequate and ineffective in curbing such wrong practices; moreover, there is always very limited access to such children centric complaint agencies.

Therefore, the approach must be made simple and children friendly, for instance, a free of charge helpline number, especially for children, must be created so as to provide them with all kinds of support and assistance and must be so designed so that they can report cases freely. This will serve the purpose of providing them free counseling and advice, particularly in the times of emergency.

The reason behind people getting away with such wrongful acts is because there is a lack of knowledge that such offences against children are punishable by law and children can claim for compensation from those responsible. The need of the hour is to develop a legislation that would deter the offenders, by making the reporting of abusive content online easier and effective such that it allows the smooth transmission of such data to the concerned legal authorities. The police officers have a very important role to play in this regard; they must investigate every matter efficiently and catch the offenders behind such offences. They must ensure that the charges against the offenders are framed accurately. In determining the liability of the offender, regard must be had to the graveness of that offence and the intention of the person committing the said offence.

Just like child abuse on the internet is very difficult to determine and is mostly hidden under the surface, child sexual abuse is also very difficult to find out at the outset. The saddest part about it is that it mostly happens to children who do not even understand it to be a wrong and the fear of victim shaming and blaming prevents them from approaching someone who can help them. Violation of body of a young child leads to lifelong turmoil and causes them permanent trauma. It is the worst possible thing to happen to any child and it scares their very existence.

The importance of Sex education cannot be emphasized enough in today's world, children ought to know what the acceptable degrees of proximity are and what amounts to a violation of their body. There is substantial evidence to show how in most cases it is the relatives or people known to the children who abuse them sexually so they need to be made aware between what is right and what isn't. Long periods of sexual abuse can render a person feeling worthless and low on

self esteem for the rest of their lives. These children are the ones who later face excessive trust issues and feel difficult to interact with others in their later lives easily, this makes them a recluse.

It does not involve only sexual abuse through physical contact it could include various forms of non-contact abuse as well, such as voyeurism, child pornography etc.

Apart from being the victims of various kinds of abuse and violence, children are the victims of many types of war and armed conflicts. Their basic human rights are trampled upon during such times and they are subject to various kinds of brutalities. Therefore, the strong need to protect the interests of small children, in times of war has always been strongly felt by various national and international organizations and in furtherance of the same, many regulations and legislations have been duly passed. Their protection in times of armed conflicts, is in fact one of the foremost agendas on the international political front. There are various international frameworks specifically designed to deal with this aspect. To enumerate a few:

- The Optional Protocol to the *Convention on the Rights of the Child on the involvement of children in armed conflict* (OHCHR) It was enforced by the UN General Assembly in 2002, to protect children from recruitment and use in hostilities.¹³
- *The African Charter on the Rights and Welfare of the Child* (ACRWC) was adopted in 1990. This charter laid down that any human being under the age of 18 years should be considered as a child. It is a very important charter for advancing child rights.¹⁴
- The Protocols I AND II i.e., the amendments to the *Geneva Conventions – Protection of victims of International Armed Conflicts and Protection of Victims of Non-International Armed Conflicts* adopted in 1977.¹⁵

The United Nation's Security Council is pro-active in matters relating to child rights. Every year it delegates to a specific group of people, the task to investigate into the most serious of violations of child rights in times of war or armed conflicts. Some of the heinous war crimes against children include sexual violence, maiming and killing of children, the recruitment of them into armed groups etc.

Conclusion

¹³ <https://childrenandarmedconflict.un.org/tools-for-action/opac/#:~:text=The%20Optional%20Protocol%20to%20the,force%20on%2012%20February%202002.>

¹⁴ https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf

¹⁵ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolII.aspx>

Even in the presence of an umpteen number of humanitarian and human rights provisions, many children still face a gross disregard and violation of their basic rights. Various reports have depicted the stark reality that in most situations, it is the schools and other educational institutions that are targeted or worse bombed by the perpetrators of violence. Al-Qaida and ISIS have their own ways of ill-treatment of the children captured by them, Al-Qaida for instance, have children carry out suicide attacks for them and they refer to them as their 'birds of paradise.' The atrocities that they are subject to are unfathomable for us.

The solution to these unfortunate treatment meted out to the children lies, not only in coming up with one framework after another, but also in the proper implementation of them. There are too many regulations and conventions at our disposal but the need of the hour is to make them more stringent. The agencies set up must endeavour to protect children in the first place and if that fails then sincere attempts must be made to rehabilitate them to ensure a better future for them.

Thus, to conclude, ending child abuse in its entirety is not an easy task but whole-hearted efforts must be made to prevent it from happening. The unfortunate victims must however, be rehabilitated and reintegrated into society so that their future does not get ruined because of the horrors of their past. To achieve this purpose, an interdisciplinary approach must be adopted in order to attain fruitful results. It is crucial that a set of methodologies are developed for creating various kinds of research, and the data acquired from it must be linked across various systems that exist in society so as to aid in measuring the impact of the problem in depth. However, the problem is so extensive and deeply embedded in our society that it cannot be resolved by superficial means. It is so intrinsic that the only way to resolve this social problem is by uprooting it from its very core.