

## Child Protection: Children's Rights in Theory and Practice

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### Abstract

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace.

-Kofi Annan

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### Introduction

Biologically, a child is a human being between the stages of birth and puberty or between the developing stage between infancy and puberty. The legal definition of child generally refers to a minor, otherwise known as a person younger than the age of majority.

“A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier.”<sup>[1]</sup>

It is very shameful for us that millions of children make their way through life impoverished, abandoned uneducated, trafficked, malnourished, discriminated against, neglected and vulnerable. For them, life is the daily struggle to survive whether they live in urban centres or rural outpost, they risk missing out on their childhood<sup>[2]</sup>. Their exclusion from essential services such as hospitals and schools lacked in the protection of family are often an exploitation and abuse with them.

Many agendas related to feminism, women empowerment, cyber security, public welfare, terrorism and environment have been given the center stage in the global arena but, the most serious issue related to the protection of children is not given the due importance that it should be. It is hard to believe that we, the adults of the world, are failing in our responsibility that every child have the right to enjoy the childhood stage in his life. Many children are still a victim of the global threats such as child refugees, hazardous labor exploitation, physical abuse, arbitrary detention of street children, sexual abuse, trafficking, lack of education and lack of proper health facilities. Many of the above problems still exist in many nations and many nations from the United States, to Syria, Iran and various others have in different ways opposed to certain aspects of children's rights<sup>[3]</sup>

In 1924, when the League of Nations adopted the Geneva declaration of Rights of the Child, many International community made a series of firm commitments to children to ensure their rights, The most far reaching and comprehensive of these commitments includes the Rights of

child, adopted by the General Assembly in 1989 which was also ratified by 192 countries.

Children's survival development and protections are now no longer of charitable concern but moral and legal obligations are held to account for the care of children by an international body. In today's scenario world leaders have not only refund and expanded this commitment but also set specific time bound goals as a framework for achieving these goals in order to provide a safe environment for childrens globally. Now while giving them their basic rights they face many problems out of which major problem is the exclusion of children from the remaining society. At first glance these children's life may appear poles apart and each of them faces a different set of circumstances and struggles to overcome distinct obstacles yet they all have something in common that is they are almost certainly excluded from essential goods and services vaccines and micronutrients, school, healthcare facilities, water and sanitation.

The other major issue is the problems of the indigenous children's that they have to face cultural discrimination and economic and political marginalization. Many of them are less likely to be registered at birth and more prone to Poor health, to low participation in education and to abuse, violence and exploitations<sup>[4]</sup>.

Case studies in individual country suggest that infant and child mortality rates are higher among indigenous groups than in the National Population. Many factors including environment conditions discriminations and poverty and healthcare services including vaccination against preventable diseases are often lacking in areas inhabited by disabled peoples. These are the major causes responsible for this. Another major issue is the problem of the Street children who are often ignore and excluded. These children are among the most physically visible of all children's living and working on the roots and the public squares of the cities all over the world. The term 'Street children' is a problematic as it can be employed as a stigmatized label problem. This is one of the major problems as street children face Demonization by mainstream society as a

<sup>1</sup> Convention of the Rights of child of 1989

<sup>2</sup> United Nations Children's fund, The States World's Children 2005, UNICEF, New York, 2004, p.10.

<sup>3</sup> The U.N. Special Session on children in 2002

<sup>4</sup> United Nations Children's Fund, 'Ensuring the Rights of Indigeneous children'

threat and a source of criminal behaviour.

Children's in the criminal justice system are also considered to be the most visible children there access to healthcare education and protections is always in conflict with the law effectively cease to be regarded as children. Instead they are perceived transgressions to remove from their childhood protection exposing them to treatment either in exactly the same way as an adult. Data on children in detention are scared but it estimates 1 million children's are living in detention as a result of being in conflict with the law <sup>[5]</sup>. It is clear that violent abuse of children in detention is a serious problem as children are at the risk of violence both before and after any trial they undergo. This includes physical and sexual violence by adult detainees, Guards, police and other Juvenile inmates. The correctional resign is itself at times excessively violent, involving indefinite detention, long period of isolation, alternatively co-mingling with adult prisoners in overcrowded and insanitary conditions.

Hundreds of thousands of children are caught up in armed conflict as combat tenants messengers Porters, cooks and sex slaves for armed forces and Groups <sup>[6]</sup>. Some are abducted or forcibly recruited, others are driven to join by poverty, abuse and discriminations or by the desire to seek revenge for violence enacted against them, their families and their loved ones. Under the control of the armed group these children are excluded from essential services and protections and they are been deprived of their rights by naming them as a child soldiers.

Early marriage is a very serious issue especially in the South Asian countries. Many of girls disappear into early marriages defined as formal marriages or customary and statutory unions recognized as marriage before the age of 18. During this period a girl is expected to set aside her childhood and assume the role of a woman embarking immediately upon a life that includes sex, motherhood and all the household duties traditionally and expected of a wife. These early marriages sometime extend to boys and in boys poverty is a major cause of it.

Some girls are forced to marry at a very early age while others accept the marriage while being too young to understand its implications or play any active part in the choice of partner. It is usually considered as a long-established tradition making protest not just difficult but really impossible. These marriage trends to ensure that woman is formerly under control of husband and also supposed to guard against pre-marital sex. For women in many societies the Independence that can emerged during adolescence is seen as an undesirable attribute in women who are expected to be subservient <sup>[7]</sup>.

In today's scenario child labor is considered as threat for the development of a nation. Child labor can be defined as work that deprives children of their childhood, their potential and their dignity. It's considered to be a dangerous work that exceeds reasonable hours and interferes with a child education. It works as an obstacle in the future of a child.

Nearly 250 million children are living in countries and areas affected by armed conflict. In the Syrian Arab Republic, the nine-year conflict has caused the deaths of 400,000 people,

according to estimates by the former Special Envoy for Syria, Staffan de Mistura. More than 7,000 children were killed or maimed since the conflict erupted, the UN verified. In Afghanistan in the first half of 2019, child casualties represented almost one-third of the overall total of civilian casualties, with 327 deaths and 880 injured.

In Somalia, children continue to be the most affected by crises. More than 5,200 children were victims of grave violations, alone in 2018, and that is just the number of reported cases. Children get recruited, used, killed and maimed. More than 3 million remained out of school last year. Hundreds of thousands were malnourished <sup>[8]</sup>

Before going further we should understand that everyone under the age of 18 has the following rights <sup>[9]</sup>

1. All children have these rights, no matter who they are, where they live, what their parents do, what language they speak, what their religion is, whether they are a boy or girl, what their culture is, whether they have a disability, whether they are rich or poor.
2. No child should be treated unfairly on any basis
3. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children.
4. The government has a responsibility to make sure there rights are protected. They must help there family to protect rights and create an environment where they can grow and reach your potential.
5. There family has the responsibility to help them learn to exercise there rights, and to ensure that there rights are protected.
6. They have the right to be alive.
7. They have the right to a name, and this should be officially recognized by the government. They have the right to a nationality (to belong to a country).
8. They have the right to an identity – an official record of who you are. No one should take this away from them.
9. They have the right to live with there parent(s), unless it is bad for them. They have the right to live with a family who cares for them.
10. If they live in a different country than your parents do have the right to be together in the same place.
11. They have the right to be protected from kidnapping.
12. They have the right to give your opinion, and for adults to listen and take it seriously.
13. They have the right to find out things and share what they think with others, by talking, drawing, writing or in any other way unless it harms or offends other people.
14. They have the right to choose your own religion and beliefs. There parents should help them decide what is right and wrong, and what is best for them.
15. They have the right to choose there own friends and join or set up groups, as long as it isn't harmful to others.
16. They have the right to privacy.
17. They have the right to get information that is important to your well-being, from radio, newspaper, books, computers and other sources. Adults should make sure that the information you are getting is not harmful, and help them find and understand the information they

<sup>5</sup> United Nations Children's Fund, 'Factsheet: Child protection', UNICEF, New York, 2016

<sup>6</sup> United Nations Children's Fund, the state of the world's children, 2005, p. 41, 44

<sup>7</sup> Early Mariage: A harmful traditional practice, UNICEF, New York, 2010, p. 4.

<sup>8</sup>[www.worldvision.org](http://www.worldvision.org)

<sup>9</sup> UN Convention on the Rights of children

- need.
18. They have the right to be raised by their parent(s) if possible.
  19. They have the right to be protected from being hurt and mistreated, in body or mind.
  20. They have the right to special care and help if they cannot live with their parents.
  21. They have the right to care and protection if you are adopted or in foster care.
  22. They have the right to special protection and help if they are a refugee (if you have been forced to leave your home and live in another country), as well as all the rights in this Convention.
  23. They have the right to special education and care if you have a disability, as well as all the rights in this Convention, so that you can live a full life.
  24. They have the right to the best health care possible, safe water to drink, nutritious food, a clean and safe environment, and information to help you stay well.
  25. If they live in care or in other situations away from home, they have the right to have these living arrangements looked at regularly to see if they are the most appropriate.
  26. They have the right to help from the government if you are poor or in need.
  27. They You have the right to food, clothing, a safe place to live and to have your basic needs met. They should not be disadvantaged so that you can't do many of the things other kids can do.
  28. They have the right to a good quality education. They should be encouraged to go to school to the highest level you can.
  29. Their education should help them to use and develop their talents and abilities. It should also help them learn to live peacefully, protect the environment and respect other people.
  30. They have the right to practice your own culture, language and religion – or any you choose. Minority and indigenous groups need special protection of this right.
  31. They have the right to play and rest
  32. They have the right to protection from work that harms you, and is bad for your health and education. If they work, they have the right to be safe and paid fairly.
  33. They have the right to protection from harmful drugs and from the drug trade.
  34. They have the right to be free from sexual abuse.
  35. No one is allowed to kidnap or sell them.
  36. They have the right to protection from any kind of exploitation (being taken advantage of).
  37. No one is allowed to punish them in a cruel or harmful way.
  38. They have the right to protection and freedom from war. Children under 15 cannot be forced to go into the army or take part in war.
  39. They have the right to help if you've been hurt, neglected or badly treated.
  40. They have the right to legal help and fair treatment in a justice system that respects your rights.
  41. If the laws of their country provide better protection of their rights than the articles in this Convention, those laws should apply.
  42. They have the right to know your rights! Adults should know about these rights and help you learn about them,

too.

43. These articles from 43 to 54 explain how governments and international organizations like UNICEF will work to ensure children are protected with their rights.

### **Child Rights in India**

We all know that India became independent on 15 August 1947. Independence ushered in a new era for children. The historical process, and its social, economic and political priorities from mid-nineteenth to mid-twentieth century, opened the way for shaping a more coherent concept of childhood located within the family as the principal institutional influence and as the prime site for socialization. Constitution of India, which came into force in January 1950, contains provisions for survival, development and protection of children <sup>[10]</sup>. Being one of the world's largest democracy, India has a federal system of government, with the States having their own democratically elected governments. Directive Principles of State Policy in Indian Constitution empowers the state to direct policies so that the tender age of the children are not abused and childhood is protected against exploitation and moral abandonment <sup>[11]</sup>. Being a party to the UN Declaration on the Rights of the Child, 1959, India adopted a National Policy on Children <sup>[12]</sup>, Child Labor (Prohibition & Regulation) Act, 1986 <sup>[13]</sup> also came into force for its further improvement. Being the signatory of the UNCRC (1992), India has globally recognized the Child Rights as binding constraint. After ratification of the UNCRC in 1992, India changed its law on juvenile justice <sup>[14]</sup> The National Commission for Protection of Child Rights (NCRC) was also set up to ensure that all laws, policies, programs and administrative mechanisms should be in consonance with the Child Rights perspective <sup>[15]</sup>.

### **The constitution of India, as of now, guarantees all the children certain rights which include**

1. Right to free and compulsory elementary education for all children between the age group 6-14 years. [Article 21A]
2. Right to be protected from any hazardous employment till the age of 14 years. [Article 24]
3. Right to be protected from being abused and forced by economic necessity to enter occupation unsuited to their age or strength. [Article 39(e)]
4. Right to equal opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment. [Article 39(f)]
5. Right to provide them early childhood care and education for all. [Article 45],

<sup>10</sup> Included in Part III and Part IV of the Constitution pertaining to 'Fundamental Rights' and 'Directive Principles of State Policy'

<sup>11</sup> Article 39 of Indian Constitution

<sup>12</sup> NPC adopted by India in 1974, to provide adequate service to children through the period of their growth for physical, mental and social development.

<sup>13</sup> Debaring the children below 14 years of age into any work or occupations.

<sup>14</sup> Juvenile & Justice (Care & Protection) Act, 2000, every person below age of 18 years is in need of care of protection, is entitled to receive it from the state.

<sup>15</sup> In March 2007, under the Commission for Protection of Child Rights Act, 2005

6. Traffic in human beings, children, beggar and other similar forms of forced labor are prohibited. [Article 23]
7. Parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years. [Article 51A(k)]

However, despite having so many legal instruments the children in India are still not secured.

Several indicators are showing how the Child Rights are being violated in different parts of the country whose plausible social and economic consequences is dangerous. Child Abuse is dangerous part of erosion which kills the potentials and development spurt of many children. According to estimates, the worst affected states in child health are Bihar, Assam, Madhya Pradesh and West Bengal respectively while on the other hand, the good performing states are Kerala, Tamil Nadu, Maharashtra and Punjab.

Despite all these developments still children in India live in a taboed society, where no-proper sex-education is provided to them. Many times children get molested and abused but due to lack of sufficient awareness, they fail to protest and keep on becoming victim of exploitation for long.

### **Comparative study of child exploitation in India with China**

Child exploitation is a violation of the basic human rights of a child. It can be virtually visualized in educational institutions globally either in the form of corporal punishments or physical abuse and as an emotional abuse, harassment as well as neglect and also in the different forms of mild or severe sexual abuses. So, for the better understanding we have tried to explain this through a comparative study among two different nations. Before starting we should know that both China and India cannot be isolated as both of them are most populous countries. There is no doubt that the governments of both the countries have taken initiatives to control it and to eradicate it as far as possible and many legislations and acts support the mission of both the governments. However, at the stage of its implementation, it is not much successful in both the progressive countries.

Children are the greatest gift to humanity and their exploitation is one of the most heinous crimes imaginable. Apart from this it is violation of their trust and breach of our commitment to protect the innocent. It occurs when other person inflict physical or mental injury or engages in acts or omissions that present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment. Child abuse is a violation of the basic human rights of a child and is an outcome of a set of inter-related familial, social, psychological and economic factors. The problem of child abuse and human rights violations is one of the most critical matters on the international human rights agenda.

Child abuse is "The physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened [16].

"Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power [17]. India is home to almost 19 percent of the world's children. More than one third of the country's population, around 440 million, is below 18 years. According to one assumption 40 percent of these children are in need of care and protection, which indicates the extent of the problem. In India, as in many other countries, there has been no understanding of the extent, magnitude and trends of the problems. Convention on the Rights of the Child (CRC) 1989 states that Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent, legal guardian or any other person who has the care of the child [18]. Child exploitation can be in many forms so, before going further we should understand its various form.

### **Physical exploitation**

According to Indian context physically exploiting a child is inflicting of physical injury upon a child which includes burning, hitting, punching, shaking, kicking, beating or otherwise harming a child. However, in Chinese context, Physical maltreatment is defined as being injured from a beating occurring without provocation. Corporal punishment was defined as the use of physical punishment for disciplining children [19].

### **Sexual exploitation**

In Indian context, Sexual abuse is inappropriate sexual behavior with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation. In contrast, in Chinese context, Sexual coercion was defined as the act of forcing other individuals through violence, threats, or deception to engage in sexual behavior against their will [20]. Others defined child sexual exploitation as unwanted touch and forced sex [21].

### **Emotional abuse**

In Indian context, Emotional abuse is known as verbal abuse, mental abuse, and psychological maltreatment of a child. This can include confinement in a closet or dark room or being tied to a chair for long periods of time or threatening or terrorizing a child. Less severe acts, but no less damaging, are belittling or rejecting treatment, using derogatory terms to describe the child, habitual tendency to blame the child or make him/her a scapegoat. While, In Chinese context it includes humiliation, harsh treatment, ignoring, shouting, speaking rudely, Name calling, and Use of abusive language in front of them.

<sup>17</sup> According to World Health Organisation

<sup>18</sup> Article 19 of Convention on the Rights of the Child, 1989

<sup>19</sup> Lau *et al.*, 2005

<sup>20</sup> Cheng *et al.*, 2001

<sup>21</sup> Chan, Yan, Brownridge, Tiwari, & Fong, 2011.

<sup>16</sup> According to Child welfare act

### Exclusion of child from the rest of the society:

In both Indian as well as Chinese context, the meaning of exclusion of child from the rest of the society is same. It is the failure to provide child's basic needs. It can be physical, psychological or emotional. Physical exclusion includes not providing them adequate food or clothing, appropriate medical care, supervision, or proper weather protection. It may include abandonment. Psychological neglect includes the lack of any emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use. From educational and health perspective it includes failure to provide appropriate schooling or special educational needs and health facilities.

### Government Initiatives to Prevent Child Exploitation In Educational Institutions

It is very clear fact that globally across different kinds of exploitation with a child. It is young children, in the 5-12-year group, who are most at risk of abuse and exploitation. In Indian context, most prevalent form of child abuse is that of Physical abuse. The child protection legal framework in mainland China was formed by emphasizing child protection in the PRC Constitution and has been implemented through a number of laws, including the Protection of Minors Act, the Law on Preventing Juvenile Delinquency, the Compulsory Education Law, the Maternal and Infant Health Protection Act, the Law on Adoption, and other policy-based 65% of school going children face corporal punishment i.e. two out of three children are victim of corporal punishment.

### Government initiatives to prevent child exploitation in India

According to the laws of India the equality of opportunity and special assistance to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas is provided. Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities of education, training and rehabilitation and will be helped to become skilful citizens<sup>[22]</sup>. India focuses that Children shall be protected against neglect, cruelty and exploitation Child Labor. Many acts were introduced in India to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments<sup>[23]</sup>.

India commits itself to ensure all rights to all children up to the age of 18 years. For this purpose the Government shall ensure all measures and an enable environment for survival, growth, development and protection of all children, so that each child can realize his or her inherent potential and grow up to be a healthy and productive citizen<sup>[24]</sup>. The Ministry of Labor, Government of India and the US Department of Labor have initiated a project aimed at eliminating child labor in 10 hazardous sectors across 21 districts in five States namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi<sup>[25]</sup>.

<sup>22</sup> National Policy for Children, 1974

<sup>23</sup> Prohibition and Regulation) Act, 1986

<sup>24</sup> National Plan of Action for Children, 2005

<sup>25</sup> INDO-US Child Labor Project (INDUS)

### Government initiatives to prevent child exploitation in China

China has ratified major international documents with regard to child right protection. China's domestic legislation also provides protection for a wide range of children's rights. China protects wide range of children's rights through domestic legislation and by ratifying and joining the relevant international treaties<sup>[26]</sup>. The PRC Constitution provides for the state protection of children, and prohibits maltreatment of children. The PRC Law on the Protection of Minors sets up Responsibilities of the families, the schools, and the government with regard to the protection of children's rights, and judicial protection<sup>[27]</sup>. Many laws in China explicitly prohibit corporal punishment of the female child (art. 23)<sup>[28]</sup>, and according to the laws of China children in work-study schools must not be treated with physical punishment on them (art. 36)<sup>[29]</sup>.

China signed Optional Protocol to the Convention on Rights of Child on the Sale of Children, Child Prostitution, and Child Pornography 2000 (2003). For this purpose, committee on the Rights of the Child (Nov. 2005) was formed. The Committee is concerned that the existing regulations banning corporal punishment in schools are unevenly implemented. As per the law Corporal punishment is prohibited in kindergartens and nurseries<sup>[30]</sup>. Article 21: states that "Teaching and administrative staff in schools, kindergartens and nurseries shall respect the personal dignity of the minors, and may not subject them to corporal punishment or corporal punishment in disguised form, or commit any other act that humiliates the personal dignity of the minors."

### Conclusion

Child Exploitation is a dark reality that inflicts our daily lives but in a majority of cases it goes unnoticed and unreported on account of the innocence of the victim, stigma attached to the act, callousness and insensitivity of the investigating and the law enforcement agencies etc. India and china has taken large strides in addressing issues like child education, health and development however, child protection has remained largely unaddressed and unsolved issue. But there is now a realization that if issues of child abuse and neglect are not solved, it will affect the overall progress of the country. Merely enacting legislation will not be enough unless this is followed by strict enforcement of the law with accountability defined. Children are the country's greatest human resource and a measure of the country's social progress lies in the wellbeing of its children which includes that they should be healthy, educated, safe, and happy and have access to life opportunities. It is our duty that Child abuse should be combated as early as possible. Besides government, many independent agencies and NGOs can work together for the betterment of children. This will help both the countries shine bright and develop in a crime freeway.

### References

<sup>26</sup> U.N. Convention on Rights of the Child 1989, adopted by Chinese government in 1992.

<sup>27</sup> Minors Protection Law, forced on June 1, 2000.

<sup>28</sup> The Protection of the Rights and Interests of Women, 1992

<sup>29</sup> Law on the Prevention of Juvenile Delinquency 1999

<sup>30</sup> Law on the Protection of Minors (2006)

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