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MESSAGE FROM PATRON

I am overwhelmed to learn that Centre for Child Rights (CCR) is bringing out its 1st Issue of Journal titled 'Child Rights Law and Policy Review'. This Journal will be a bi-annual publication and will focus on the rights of children within the broader framework of Human Rights. The 1st issue of the journal contains the contribution of research papers from the national conference on 'Addressing Violence against Children in North Eastern States and Sikkim'. The quality of the published articles in the journal reflects the commitment of CCR in the field of research and learning centering around children.

Centre for Child Rights (CCR) was established as a 'Centre of Excellence' to promote advanced research, study and teaching. The Centre has established its recognition by doing remarkable work by providing technical support to various departments of Government of Assam, enhancing capacities of child protection work force through series of different trainings, building awareness among the masses, developing various IEC materials and this Journal is another fine work of the Centre showing its continued commitment to the welfare of children. The Journal reflects high quality research and originality of thoughts in addressing violence against children in north eastern states and Sikkim. I highly value the contribution of the authors for who had submitted their articles and participated in the conference. I would also like to congratulate the organizing committee for the wise choice of the symposium topic.

I would like to express my sincere appreciation to the members of the Editorial Board and reviewers for their consistent effort and contribution. I believe the Journal will burgeon and become a valuable source of knowledge to many scholars, academicians and student who would like to make a difference in the lives of children of our Country.



Prof. (Dr.) J.S. Patil
Vice Chancellor

EDITORIAL

A National Conference on “Addressing Violence against Children in North Eastern States and Sikkim” was held in 2017. In this first issue of the Child Rights Law & Policy Review, we present selected papers from the conference.

Adrita Bhuyan in her article titled “Innocence Lost Under Grenades” focuses on helping children and adolescents affected by crimes committed by the Indian Armed Forces under the Armed Forces (Special Powers) Act, 1958. She notes that since the Act does not make any distinction between adults and children, apprehended children face several rights violations like being handcuffed, kept in police lock up etc. Additionally, the Police also fail to produce such children before the Juvenile Justice Board, as mandated by law. She analyzes international legal provisions applicable to children during situations of violence that would uphold their innocence over grenades. She suggests reformative action that needs prime focus by the Indian government and other non-governmental bodies for the benefit of children.

Anam Hilaly in her article titled “Between Labour Lines: An Observation of the Lifestyle of Children in Tea Gardens” points out that there prevails a cut-throat competition in the accumulation of capital wherein players of the market try to acquire as much wealth as possible in pursuance of which they employ the locally available semi-skilled, or in most cases unskilled, cheap labour in the form of women and specially children. She states that the number and types of violations of children’s rights in the State of Assam, especially in the tea garden areas is abhorrent. She analyzes the provisions of the Plantation Labour Act, 1951 impacting children and concludes that the same are either not in consonance with the provision of the progressively emerging legal and policy framework that evolved in India for the protection of Child Rights, or have proved to be inadequate to meet the benchmarks prescribed in various national flagship programmes pertaining to children.

Gitanjali Ghosh in her article titled “Deciphering Legal Safeguards for Child Soldiers in North East India vis-à-vis International Standards” looks at a prominent but no so popular malady of child soldiers. She elaborates on how the issue is not quite in focus as there is lack of actual documentation of cases of child soldiers. She further states that the situation is exacerbated, as there is no government programme providing for the rehabilitation of former child soldiers into the mainstream. She analyzes the huge body of international humanitarian law and international human rights laws, which provides for a plethora of protections against recruitment of children as child soldiers in addition

to the fair share of Indian laws governing the same. The point of focus of her article is to decipher the adequacy and effectiveness of the same vis-à-vis international standards.

Himangshu Ranjan Nath in his article titled “The Saga of Right to Education of a Special Child: The RPWD, 2016 Perspective” looks at the right to education of children with disabilities under the recently amended and renamed Rights of Persons with Disabilities Act, 2016. He points out that although the law can be categorized as propitious to the Preamble objective of social justice and equality; there are numerous hurdles which basically surround the realization of this right by children with disabilities. He primarily endeavors to study such issues concerning the protection of special children in the school premises along with other allied and incidental disquiets based on an analysis of the said Act. In order to understand the problem and to get the views of parents, caretakers, caregivers regarding the environment and situations revolving around the problem, he has also conducted empirical study in various special schools and institutions of the state of Assam.

Hitesh Manglani and Saurav Jhunjhunwala in their article titled “The Problem of Child Pornography in the State of Assam: An Analytical Study” build up the argument that child pornography is a serious cyber crime against children. They further analyze the legal framework available in India with the help of the reports and data released by various institutions and statutory bodies to emphasize on the rise of such cases in the state of Assam. They also examine the Government initiatives taken in this account as well as the role of judiciary.

Manisha Chachra in her article titled “Investigating Child Trafficking Case Studies in Assam and Manipur vis-à-vis Operation Babylift” traces the two ends of the spectrum of child trafficking - firstly, by comprehending trafficking incidents in Assam and Manipur by looking at different case studies from the two states and secondly, by studying Operation Babylift. She scrutinizes the interstices of modus operandi of child traffickers and the required political interventions in such cases. She also enquires into how the state through legal instruments can restore a balance of constitutional values, and concentrate resources in meeting the Goal 16 of the Sustainable Development Goals.

Thangzakhup Tombing in his article titled “Legal Pluralism and the Notion of Rights of Child among the Tribal Communities of the North East India: A Critical Analysis” the vulnerability of children in North-East India is manifold in comparison with the rest of the children across India. He adds that the peculiarity of the customs and the traditions of the different tribes inhabiting the region mandate the need for the evolution of a peculiar narrative of child rights palatable to the specific

needs of the tribal communities depending on the values, understanding and practice of each tribe. He asserts that the first step is by accepting the plurality of the cultures, traditions and customs and customary laws of the different tribal communities residing in the North East of India and that the plurality and diversity of the notion has to be tested and interpreted within the ambit of Chapters III and IV of the Constitution of India as well as the universally accepted norms of rights of child.

- Editorial Board

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INNOCENCE LOST UNDER GRENADES

Adrita Bhuyan

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Abstract:

Among the 'seven sister' states that are fully or partially governed by the Armed Forces Special Powers Act 1958¹ at times in concurrence with other state and national security. The north-eastern part of the Indian subcontinent has been affected by turbulence since ages. Media coverage of the harsh situation in the region is often not found in the headlines of newspapers, as they mostly are unreported. The region shares its border with international countries and the presence of armed forces, the status of law and order of the region has been depleting unmatched with the growing GDP of the country as a whole. Internal armed conflicts mainly affected the non-combatants especially women and children who are considered to be most vulnerable where they must be accorded special respect and be protected against any form of indecent assault,² mentioned under the Geneva Convention relative to the protection of civilian persons in time of war and the additional protocols.³ Both in the international and the national level, in terms of establishment of laws there has Internal armed conflicts mainly affected the non-combatants especially women and children who are considered to be most vulnerable where they must be accorded special respect and be protected against any form of indecent assault,⁴ It been a proper framework laid down but in terms of implementation of laws towards welfare of the children, the figures of the National Crime Bureau, 2014 has a disparate picture to depict. In the presence of such draconian system, the primary years of the child development in terms of health and education disappears as the resources available to the government is utilised in the production of arms and ammunitions rather than human resources investment. The main focus area of this research project is helping children and adolescents manage risks and social attitudes of children affected by crimes conducted by the Indian Armed Forces under the Armed Forces (Special Powers) Acts (AFSPA), 1958. Since the Act does not make any distinction between adults and children, apprehended children are handcuffed, kept in police lock up and/or in detention centres, along with other apprehended adults, where they are subjected to further torture and various other forms of ill treatment and their right to life and liberty stand jeopardized. Further, from the point when the children are apprehended or picked up, they are denied the right of information about the reason of their detention or arrest and right of establishing communication with their parents, respected community leaders or for the purposes of seeking appropriate legal advice, which ultimately results in denial of their fundamental

¹ The Armed Forces (Special Powers) Act (1958), No. 28, Acts of Parliament, 1958 (India).

² Geneva Convention Relating to Protection of Civilians art. 76 and 77, Aug. 12, 1949, 75 U.N.T.S. 135.

³ Id.

⁴ Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Dec. 14, 1974, A/RES/3318(XXIX).

rights guaranteed by Article 22 of the Constitution of India.⁵ Additionally, the Police fail to produce such children before the Juvenile Justice Board, as mandated by law. Such activities would gravely hamper the future of the children residing in north-east India and Sikkim particularly. The research paper towards the end suggests reformative action towards this problem that needs prime focus by the Indian government and other non-governmental bodies for the benefit of children. The research paper towards the end also analyses the legal incentives provided to children by the United Nations during situations of violence that would uplift their innocence over grenades.

Seven Sisters and One Brother

"They kept on pouring water into my nostrils until the water came out in my ears; it felt warm inside my ears. Then they stamped on both my thighs while two persons held my feet while another man sat on my head... They touched the wires' ends to my chest and gave me shocks three times. Each time I felt as if my whole body had contracted... I keep remembering how they used to beat me and see everything that happened to me vividly." – 14-year-old child tortured by Indian soldiers in the north-eastern state of Manipur.⁶ The UDHR states "Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world."⁷ North-East India comprises of seven contiguous sister states—Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura and the Himalayan State of Sikkim (added in 2002).⁸ In terms of geographical size, North-East India constitutes only about eight per cent of India's total size, and its population is approximately 40 million, which represents only 3.1 per cent of the total Indian population,⁹ which is 1,210 million. The region has an influx of human and natural resources that has the ability of developing the nations to new heights. Though the Government of India has sufficiently invested in the development projects of the region, internal turbulence and corruption even in the minor sectors of the economy of the region has effected the growth rate. Apart from economic condition, socially the region has gender specific. By an Act of Parliament, the North-Eastern Council (NEC) is officially recognised as the nodal agency for the economic and social development of the North East region.¹⁰ The Ministry of Development of North Eastern Region (DoNER) was set up in September 2001 as the nodal Ministry responsible for the matters relating to the planning, execution and monitoring of development schemes and projects in the North-East region.

⁵ INDIA CONST. art. 22.

⁶ L.A. PINTO & N. THOCKCHOM, INDIGENOUS CHILDREN OF NORTH EAST INDIA: THE DENIAL OF CHILDHOOD, 1-29 (2000).

⁷ ANUJ KANCHAN DATTA ROY, PROTECTING HUMAN RIGHTS: ROLE OF STATE HUMAN RIGHTS COMMISSIONS IN NORTHEAST INDIA 142 (2011).

⁸ Ministry of Development of the North Eastern Region, <http://www.mdoner.gov.in/content/why-mo-doner>

⁹ Census of India 2011, (March 31, 2011), http://www.censusindia.gov.in/Census_Data_2001/States_at_glance/state_profile.aspx

¹⁰ The North East Council Act, 1971, No. 84, Acts of Parliament, 1971 (India).

The North-East region is potentially one of the richest geographical units of the country constituting only 7.98 per cent of the geographical area of the country and has nearly one fourth of the country's total forest cover of India.¹¹ Reserves of petroleum and natural gas in the region constitute a fifth of India's known reserves.¹²

The North-Eastern region of India comprises several ethnic groups with diverse socio-cultural settings. Since independence, the region is perpetually placed under military rule with the draconian law called Armed Forces (Special Powers) Act 1958 [as amended in 1972].¹³ That the intervention by the armed forces is a long-standing and real fact is fairly well known. Today, the state is treating the region's political struggle and social movements as anti-state, anti-national, disruptive and manifestations of terrorism.¹⁴

With the proclamation of AFSPA in these regions, there have gross violation of human rights in the region, most of which are unreported. Several movements have been called upon to highlight to the nation about the gross violation of human rights in the region but despite efforts by several organisation, the AFSPA has not been called off in the North-east of India. This paper concentrates on the several central-state legislations that have been set-up for the protection of the most vulnerable section of the society i.e. the children especially in the North-eastern region of the country. The paper also tries to delve into the matter of special legislation set-up in order to protect the region and elimination alienation and dissertation by region from the rest of the country. Children have been given special status in the country but gross violation of laws by the AFSPA have not only affected children physically and mentally but also kept a dark room in their future.

The Armed Forces (Special Powers) Act 1958 confers extraordinary power to the Indian Aimee and other security forces in the "disturbed areas" of the region.¹⁵ The Act gives no precise definition of a "disturbed area".¹⁶ The declaration of any area as "disturbed" under Section 3 of the Act is the prerogative of the Governor of the State or the Central Government.¹⁷ The State Legislature has absolutely no jurisdiction in the matter under the Act empowers the Army to search, seize, arrest and even kill anyone suspected to be an insurgent in order to maintain "law and order".¹⁸ No inquiry can be held against any action of the Army unless specifically sanctioned by the Central Government.

¹¹ State of Forest Report 2013, (Aug. 12, 2014), <http://mdoner.gov.in/content/forest-cover>.

¹² Indian Petroleum & Natural Gas Statistics, (Aug. 12, 2014), <http://petroleum.nic.in/pngst>

¹³ U.A. Shimray, North-East and the Act called AFSPA, MAINSTREAM WEEKLY (April 24, 2007).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

The Act authorises even an ordinary soldier to "shoot to kill", to enter and search, arrest without warrant any person on mere suspicion.¹⁹ The presence of such extraordinary power envisaged on the Armed forces might lead to gross violation of human rights which might get unreported because the mere presence of AFSPA eliminates the power of the state as simply as an observer that has no power even limitedly to protect the people of the state. Children are vulnerable to such a situation because neither they are strong physically to fight against the armed forces nor in most situations they lose their parents or guardian during such times.

Of the 39% child population in India, around 53% have been victims of child sexual abuse.²⁰ Irrespective of their gender, social strata or class, they are exposed to various forms of sexual abuse. Growing complexities associated with the urban life style, nuclear families, working parents, poor awareness and social stigma all together render the present day child most vulnerable to sexual abuse. Non-indulgent social attitude, double standards towards child sexual abuse, poor community and authority response, non-denial and hesitant family response, insensitive police and medical fraternity are greatly responsible in the growth of child sexual abuse in India.²¹ In the AFSPA affected areas, the rate of crimes against children especially sexual has increased in an unprecedented rate. Hence in this paper the researcher would consider the various legislations along with the prevailing social condition along with social condition of the region. Towards the end, the researcher suggests reformative policies towards this problem that needs prime focus by the Indian government and other non-governmental bodies for the benefit of children. The research paper towards the end also analyses the legal incentives provided to children by the United Nations during situations of violence that would uplift their innocence over grenades.

Central and State legislations: On protection of children in India

The parliament is the supreme law making body of the country and frames laws for the protection and development of the people of the country. There have been several central legislations protecting children of the country from harsh and difficult situation but the applicability has been found lost in certain situations. Every single child in the country has the right to proper livelihood and free and fair education. According to the United Nations Convention on the Rights of Child, child means a person male or female who is below 18 years of age. While casting glance over Indian situation, it is found that, around 440 million are children which constitute around 40 percent of country's

¹⁹ *Id.*

²⁰ Ministry of Women and Child Development, Government of India, National Plan of Action for Children (2016).

²¹ DR. PREETI BHARADWAJ & DR. RAJWANTI SANDHU, HUMAN RIGHTS OF CHILDREN IN INDIA 34-44 (2016).

population.²² India has high rate of neo-natal deaths which is around 35 percent in the world. Around 50 percent of child mortality occurs in the country.²³

Keeping in view the problems and challenges faced by children, laws have been introduced and various policies and programmes are being implemented for the welfare of children in India.

The National Policy for Children, 1974 was adopted on 22nd August 1974 in order to address the emerging challenges relating to child rights. An advisory and Drafting Committee had been formed for the purpose. The regional consultations regarding drafting of working paper on Policy of Children had been held across the country with concerned Ministries and Departments from States and Union Territories, civil society organisations, government and non-government organisations, academicians and experts etc.²⁴

Thrust Areas of the Policy

Reducing Infant Mortality Rate;²⁵

Reducing Maternal Mortality Rate;²⁶

Reducing Malnutrition among children;²⁷

Achieving 100 percent civil registration of births;²⁸

Universalisation of early childhood care and development and quality education for all children;²⁹

Achieving 100 percent access and retention in schools including pre-schools;³⁰

Complete abolition of female foeticide, female infanticide and child marriage and ensuring the survival, development and protection of the girl child.³¹

Article-15 & 15(1) of the Constitution of India The State shall prohibit discrimination against any citizen on the grounds of religion, race, caste, sex. Nothing in this article prevents the State from making any special provision for women and children.³²

²² Chinmayee Satpathy, Issues concerning Children Child Welfare Policies and Programmes in India, YOJANA ICSSR, (2012).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² INDIA CONST. art. 15 & 15(1).

Article -21 A of the Constitution of India The State shall provide free and compulsory education to all children of the age 6- 14years in such manner as the State may, by law determine. ³³

Article-24 the Constitution of India No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.³⁴

Article-39(f) the Constitution of India Enjoins the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.³⁵

Article-45 the Constitution of India The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article-243 G Provides for institutionalisation of child care by seeking to entrust programmes of women and child development to Panchayat (item 25 of Schedule 11).³⁶

The Immoral Trafficking (Prevention) Act (ITPA), 1956

It prohibits commercial sexual exploitation and all cases relating to prostitution registered under the Act. This Act defines a minor as a person between 16 to 18 years of age. The Act also says that if any person over the age of 18 years knowingly lives wholly or in part on the earning of the prostitution of any other person shall be punishable with imprisonment up to 2 years or with fine up to Rs1000 or both, or where such earnings relate to the prostitution of a child or a minor, shall be punishable with imprisonment for 7-10 years. The Act prohibits the activities relating to prostitution in a public place or within 200 metres from a public place.

The Right of Children to Free and Compulsory Education (RTE) Act

It came into force in the year 2010 which provides the right of children to free and compulsory education in the neighbourhood school which are to be established within 3 years' time period.³⁷

The Integrated Child Development Scheme (ICDS) is a Centrally Sponsored Scheme of Government of India for early childhood care and development. The prime objective of the programme is to lay foundation for proper psychological, physical and social development of the child, improve health and nutritional status of children below six years of age, and reduce infant mortality. The

³³ INDIA CONST. art 21-A.

³⁴ INDIA CONST. art.24.

³⁵ INDIA CONST. art 39(f).

³⁶ INDIA CONST. art. 45.

³⁷ The Right of Children to Free and Compulsory Education (RTE) Act 2009, No 35, Acts of the Parliament, 2009.

international agencies like UNICEF, USAID, DFID and CARE India serve as development partners to provide technical and other supports to ICDS for its effective operation.³⁸

Provisions under International Humanitarian Laws

Women and children enjoy the protection of all the rules of international humanitarian law, IHL human rights law and refugee law. IHL contains a number of rules aimed specifically at protecting women or children in war. International human rights law has specific conventions on the rights of women or children (The Convention on the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC)). There is also recognition under international refugee soft law of the specific protection needs of displaced women or children (e.g. UNHCR Executive Committee conclusions).³⁹ These standards provide, among other things, that women shall be especially protected against threats to their physical safety, rape, sexual exploitation, and discrimination. Standards specific to children include protection from all forms of violence and forcible recruitment. Education is a basic right protected under all three branches law. Protocol additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts under Art. 4 states "Children are to be evacuated to safe areas when possible and reunited with their families." Arts. 24, 25 states that "This Convention provides for the care of children who are orphaned or separated from their families. The ICRC's Central Tracing and Protection Agency is also authorized to transmit family news and assist with family reunifications, with the help of Red Cross and Red Crescent national societies." The CRC and the WFFC Declaration reiterate many of the commitments to children contained in the Constitution of India and give further impetus to the Government's commitment to vigorously pursue the National Policy for Children (1974), the National Plan of Action for Children (NPAC) 1992, and the principles outlined in the Tenth Five Year Plan.

Provisions of the AFSPA : Historical and Contemporary

The procedure established by law which curtails or takes away the personal liberty guaranteed by Article 21,⁴⁰ must be fair, just and reasonable and it must not only be tested on the anvil of Article 21 but it should also meet the requirements of Article 14 and 19.⁴¹ The AFSPA is a direct assault on the above-mentioned rights which forms the basic structure of the Constitution. The unbridled powers vested with the armed forces are neither fair nor just and reasonable but rather oppressive and arbitrary. Instead of facilitating peace it has always triggered violent public protests and proved to be ineffective in tackling security challenge. The act on the face of it violates Article 21 and

³⁸ *Id.*

³⁹ Women's Rights are Human Rights, <http://www.ohchr.org/Documents/Events/WHRD/Women-RightsAreHR> (last updated May 01, 2018).

⁴⁰ INDIAN CONST. art. 21.

⁴¹ Maneka Gandhi v. Union of India, AIR 1978 SC 597 (India).

22 of the Constitution. Section 1 of the AFSPA act clearly states that this act is applicable in the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.⁴² There are several contradictions in the act itself such as Section 4 that describes "Special Powers of the Armed forces" which provides them with unlimited powers to arrest or maintain public order is the police official considers the situation in relation to Section 6 "Protection to persons acting under Act" that states "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."⁴³

Right to Life

Right to life are the basic necessities of livelihood that have been guaranteed by the Indian Constitution. Section 4(a) of the Act which grants armed forces personnel the unrestricted power to shoot and kill violates Article 21 of the Constitution.⁴⁴ The Supreme Court has interpreted the 'right to life' to include the right to live with human dignity whereas the term liberty, as used in the provision, as something more than mere freedom from physical restraint or the bounds of a prison.⁴⁵ But the absolute and unfettered power vested with the Armed Forces to shoot on sight based on mere suspicion or on contravention of any law or order prohibiting the assembly of five persons or the carrying of weapons or of things capable of being used as weapons,⁴⁶ violates the sanctity of the right to life and personal liberty. Fair, just and reasonable procedure also includes the right to the speedy trial,⁴⁷ which in turn includes proper investigation, enquiry, trial, appeal, revision and retrial but the immunity given to armed forces against prosecution under Section 6 of the act renders impossible for the affected persons to seek remedy.⁴⁸ The basic premise of such blanket immunity is to prevent the filings frivolous charges against security forces, as held in the Indrajit Barua v. State of Assam case. The court even said that the adequate safeguards exist to prevent misuse of the law.⁴⁹

Right Against Punitive & Preventive Detention

Article 22 of the Indian Constitution lays down a handful of safeguards on preventive and punitive detention including⁵⁰ right to be apprised of the grounds of arrest; right to consult and to be defended by a legal practitioner of choice; the right to be produced before a magistrate within 24 hours; and freedom from detention beyond the said period except by order of the

⁴² The Armed Forces (Special Powers) Act §1 (1958).

⁴³ The Armed Forces (Special Powers) Act §§ 4, 6 (1958).

⁴⁴ The Armed Forces (Special Powers) Act §4(a) (1958).

⁴⁵ Kharak Singh v State of Uttar Pradesh, AIR 1963 SC 1295 (India).

⁴⁶ *Id.*

⁴⁷ Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, AIR 1979 SC 1360 (India).

⁴⁸ The Armed Forces (Special Powers) Act §6 (1958).

⁴⁹ Indrajit Barua v. State of Assam, AIR 1983 Del 513 (India).

⁵⁰ INDIAN CONST. art. 22.

magistrate.⁵¹ Section 54 provides for the mandatory medical examination of the arrested person and Section 129 provides for magisterial inquiry of every case of death in police custody.⁵² But unfortunately, AFSPA does not provide any of the above-mentioned safeguards to detainee rather it is a tool in the hands of armed forces to inflict torture and cause wilful killings. Under CrPC the Police is prohibited from causing death of a person who is not accused of an offence punishable with death or with imprisonment for life,⁵³ but section 4(c) of AFSPA authorizes the armed forces to may use such force as may be necessary to effect the arrest without any limitations to prevent the causing of death of a person.⁵⁴

Case Studies related to AFSPA & Violation of Child Rights

The following survey has been conducted by the International non-governmental organisation. Human Rights Watch urges the government of India to repeal the Armed Forces Special Powers Act (1958) and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990). The AFSPA is a symbol of abuse, oppression, and discrimination. Its application and misuse has fuelled a cycle of atrocity and impunity and inflamed passions for militancy in various parts of the country. The growth of militant groups under the 50- year application of the AFSPA is evidence that countering armed insurgency with disregard for human rights is ineffective.⁵⁵

In the section, the researcher provides certain case studies related to the gross violation of Child rights by the AFSPA.⁵⁶ The armed forces carry out abuses in the name of counterinsurgency operations,⁵⁷ and are shielded from accountability by the AFSPA. One of the starkest abuses under the AFSPA in Assam has been the imprisonment of young children. More than 20 children between the ages of four and 12 have languished in different jails across the state. The unarmed children and their mothers were first detained by Bhutanese soldiers in a 2003 counterinsurgency operation against militant bases in Bhutan. They were then handed over to Indian authorities and jailed. The children have grown up behind bars with their only crime being that they are children of suspected separatists.⁵⁸ Children have also suffered sexual violence at the hands of the armed forces. A 12- year-old girl was raped by a member of the Assam Rifles in Karbi Anglong on February 7, 2005.⁵⁹ Medical tests confirmed

⁵¹ *Id.*

⁵² The Code of Criminal Procedure §§ 54, 129 (1973).

⁵³ The Code of Criminal Procedure § 46(3) (1973).

⁵⁴ The Armed Forces (Special Powers) Act §4(c) (1958).

⁵⁵ Human Rights Watch, India: Getting Away with Murder, 50 Years of the Armed Forces Special Powers Act, <http://www.refworld.org/docid/48a93a402.html> (last updated May 01, 2018).

⁵⁶ The following cases have been adopted from the report of the human rights watch, Citation 58.

⁵⁷ ACHR, "India Human Rights Report 2007, <http://www.achrweb.org/reports/india/AR07/asom.htm> (last updated May 01, 2018).

⁵⁸ *Id.*

⁵⁹ *Id.*

that the abuse was sustained after the child was sedated with sleeping tablets. Fearing a backlash against the military and the AFSPA similar to that which followed the death of Manorama Devi in Manipur (see below), police arrested the accused and his accomplices. Local women's groups are demanding justice emphasizing that the usual token monetary compensation for such heinous crimes committed by security personnel is unacceptable.⁶⁰ As in other areas militarized under the AFSPA, women in Mizoram were particularly vulnerable to violations by security personnel, including rape, sexual violence, and arbitrary detention. For example, a woman named Lianthangvuanga was raped by five soldiers when she was 13 years old. She managed to escape but then suffered the further trauma of witnessing her father being tortured by the army. He died as a result of his injuries. In recounting what had happened 30 years before, Lianthangvuanga revealed that for years she had not talked about her experience with anyone because family members and her community had chosen to "forget" the experience. She was left feeling shameful of herself for being violated by the officers.⁶¹

A particularly disturbing example of the volatile environment that has developed in areas militarized under the AFSPA is the 1995 killings in Kohima city. Soldiers began shooting indiscriminately after mistaking the sound of a tire bursting for a bomb attack. Seven civilians, including girls age three and eight, were killed in the hour-long firing that ensued. A further 22 were seriously injured, including seven children.⁶²

Initiatives undertaken by the Indian government and Non-governmental bodies to reduce violation of child rights in the North-eastern and Sikkim region

There have been number of initiatives undertaken both by The Indian Government and the Non-Governmental bodies in the North-Eastern and the Sikkim region of the country to provide children below the age of 18, for both the gender a better way of life. Various NGO's have conducted awareness camps and collaborated with each other or small regional organisation or the common people to bring change in the lifestyle of the inhabitants but sadly the lack of knowledge of rules and regulations as per mandate of the Constitution of the India. In terms of the nation's interest, the government has not yet considered the gross violation of human life in the region.

Reformative policies towards this problem that needs prime focus by the Indian Government and other Non-governmental bodies for the benefit of children

The reformative policies that should be taken towards this issue of gross violation of child rights with the presence of AFSPA in the North-eastern region of the country are as follows:

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

Creating awareness among the people towards protection of child rights. There is a large section of the population that live in the rural areas and have no access to education in their location. Though there have been series of awareness programmes conducted by various organisation in the past two decades but the social attitudes of the people have not changed over the span of time. Social attitudes differ from society to society, when a society or association in that particular society decides to revolt against wrong happenings, the impact is larger than the usual because there is a common disagreement among the people of the region. Apart from awareness camps, awareness can also be generated through more accessible people of the villages such as the Sarpanch. Villages also have co-operative firms, these co-operatives can generate funds and spend it towards education and health of the society.

Legal aid and advice by State governments in collaboration with international organisations like UNICEF. **Educate the under-privilege section of the society regarding the constitutional guarantees for children in the society.** Legal consultation to the uneducated section of the society. Empowering local community leaders to educate municipally schools about laws that the Constitution guarantees to the citizens of the country as a whole and the north-eastern region of the country as specifically. Inspiring students and legal practitioners to undertake awareness and small projects like sponsoring child education aided by government or private bodies. Legal practitioners should also be inspired to undertake cases in those regions which have less access to the justice system.

Restrict the power of the AFSPA towards children. If we culminate the incidents of crime on the children by the Indian army through the unlimited powers given to them by the AFSPA Act the researcher strongly feels that there should be a limitation on the powers of the army towards children. Children should not face such harsh and severe situation. There have been instances where the children have been used as tools by the army to maintain their form of law and order in the regions. He law should protection children, also there should be an mandate which states that promotes fair and proper trial to be conducted to all especially to the families having children below the age of 18 as childhood is the most important journey of a child. A bitter childhood might result in a bitter future. Social and economic assistance to the families of the deceased.

If a person is guilty of creating law and order problems and if he is the only earning member of the family, the death of such a person might result in breakdown of the family. In this situation of gross violation of law and order in the north-eastern states, the intervention of the government authorities is of prime importance. Such families should be aided by the government in some way possible, such as education their children, providing jobs to other capable

and qualified members of the family to retain and revive themselves to a proper way of life that gives them the equal respect and protection that every person in the country deserves.

Therefore, there are several reformative actions that can conducted for the good faith of the people the country provided the higher organisational bodies of the country to bring change into the lives of several innocent people especially children who are facing the repercussions of actions that do not have their fault.

BETWEEN LABOUR LINES: AN OBSERVATION OF THE LIFESTYLE OF CHILDREN IN TEA GARDENS

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Abstract:

In the contemporary era of global capitalism there prevails a cut-throat competition in the accumulation of capital in which the big as well as the petty players of the market try to acquire as much wealth as possible through the cheap labour so as to maximize profit. In pursuance of the same they employ the locally available semi-skilled, or in most cases unskilled, cheap labour in the form of women and specially children. While the situation remains despicable throughout the country, the number and types of violations of children's rights in the State of Assam, especially in the tea garden areas is abhorrent.

A substantial section of the population in tea garden areas consists of children, both wards of plantation labourers as well as child labourers. The pre-independence practice of employing the entire family in a plantation in order to reduce labour costs has resulted in the current trends of employment of adolescents and children in the permanent labour force. While the Plantation Labour Act 1951 has several provisions concerning children with regards to lower working hours, free education facilities between ages 6-12, and creche facilities for children under 6, the truth of the matter remains that the provisions in the Act (as Amended in 1953, 1960, 1961, 1981 and 2010) impacting children are either not in consonance with the provision of the progressively emerging legal and policy framework that evolved in India for the protection of Child Rights, or have proved to be inadequate to meet the benchmarks prescribed in various national flagship programmes pertaining to children.

Children in tea plantations are subject to various types of violations of their rights. Children are lured away from their homes in tea plantations under the pretext of better work, more money, or the promise of love and better living standards, and then trafficked beyond the state borders for a meagre amount of money. The medium of instruction in primary schools in tea garden areas are different from the local dialect, which leads to decreased interest in education. This lack of quality education or violence in and around schools pushes children into work. Due to the lack of creche facilities, girl children are usually forced to drop out of school to take care of their younger siblings and do household chores. Most parents that are plantation labourers do not believe in the education of their children; their argument being that having an extra set of hands at work increases the family income, and eliminates the cost that would have to be incurred for their education.

A lack of detailed study on child labour, different perspectives of the scenario by stakeholders age, insufficient children homes, a nascent counselling status, lack of awareness, acceptance of child labour by few sections in the educated elite and other factors are some of the biggest challenges in the fight against child labour. No single

policy by itself holds the capacity to bring an end to child labour. Multi-sectoral targeted action that simultaneously increases access to quality education and addresses legislation, public services, social protection and the functioning of labour markets can help yield higher returns in the fight against child labour, including its worst forms.

Keywords: Tea gardens, children, violence, Assam, child labour, trafficking

Introduction

Article 3 of the United Nations Convention for the Rights of the Child (UNCRC), of which India is a signatory, dictates that the best interests of the child must be a top priority in all decisions and actions that affect children¹.

India has the largest number of child workers in the world. According to the 2013 edition of UNICEF's State of the World's Children, 12% of children aged 5 to 14 in India are child workers (i.e. 29 million children)². According to India's 2011 census, which uses a different definition of child labour, there were 10.12 million economically active children in the age-group of 5 to 14 years, which comprises of a total of 5.6 million boys and 4.4 million girls. Children in the informal sector, which includes domestic work, largely remain invisible and are therefore not fully covered in official data. Working children aged 15 to 18 years too remain outside the purview of legislation and therefore are not covered in any data gathered on child labour. In Assam, as per Census 2011, there are 70,36,066 children who are between 5-14 years of age, out of which 3,47,353 children are in engaged in some form of work. This is 4.9% of the total population cohort of 5-14 years in Assam³.

A 2004 report by the National Human Rights Commission on trafficking of women and children said that one-third of children reported missing every year in India remained untraced and that many of these were trafficked. Child labour, illegal adoption and prostitution are the main reasons why children go missing. According to National Crime Records Bureau data, 3,940 cases were registered in 2013 under different provisions of the law that come under the generic description of human trafficking. Many of those trafficked end up as domestic workers, working in slave-like conditions. Placement agencies illegally earn Rs. 13,000-41,000 crore per year by exploiting an estimated 7-17 million domestic child labourers, according to a report, Economics Behind Forced Labour Trafficking, by Global March Against Child Labour, a non-governmental organization (NGO). "In the National Capital Region, the estimated number of registered and unregistered placement agencies is around 3,000. At least 30% of these engage child labour. Each agency is able to place 60-100 children as domestic workers every year. The agencies receive commissions of Rs. 20,000-50,000 per child. They pay the child anywhere between Rs. 1,500 and Rs.4,500

¹ Convention on the Rights of the Child art. 3, Nov. 20, 1989, 1577 U.N.T.S. 3.

² The State of the World's Children, 2013, UNICEF.

³ Census of India, 2011.

per month. This money, too, is often kept by the agency and does not reach the child," the report states⁴.

Statistics show that the percentage of child workers (5-14 years) to its total population (2011) in Assam is higher than the national average. The child worker (5-9 years) ratio (2011) is lower than the national average, but in the categories of 10-14 years and 15-19 years, the numbers are much higher. One of the main reasons behind this is that cheap labour is primarily manual labour, and child workers can be hired at lesser rates. This census data is not entirely reliable because the numbers given here are underestimated. This data does not take into consideration the invisible forms of child labour, like domestic child labour and working within the family.

Tea communities represent approximately 17 per cent of the population of Assam. The tea community are one of the most socially excluded groups in Assam, and their assimilation has been constricted because of their geographical isolation and resultant differences in culture and tradition. Their social norms are one of the primary reasons for their development indicator levels being lower than the country average. Given their culture and traditions, they have a much higher incidence of early marriage, making girl children especially vulnerable to this practice. The learnings from the ongoing child protection interventions at tea garden level as well as from upscale advocacy with the state government in Assam has shown the children and adolescents are vulnerable to a range of child protection concerns, including sex trafficking, exploitative and bonded labour, physical and sexual abuse within the domestic household and in the community. Alcoholism and inadequate parenting skills exacerbate the protection concerns of dependent children and adolescent in tea communities.

Methodology

The information and data from this study have been collected from secondary sources like books, articles, newspapers and various internet sources.

Child Labour in the Context of Tea Gardens

Lush tea gardens sprawled across the state of Assam with their serenity are but a picturesque sight like no other. But underneath this facade lies an anthology of stories stemming from destitution and abuse. Forced labour is one of the most common abuses occurring in the tea industry, including, but not limited to, nonpayment, wage theft, and restrictions of movement⁵. Traditionally, tea plantation workers are promised benefits by their employers that include education, medical assistance, subsidised food rations and drinking water,

⁴ Ashwaq Masoodi, *Human trafficking: A phone call to the heart of darkness* (Sept. 05, 2014), <http://www.livemint.com/Politics/nierR4Q3L7VfwkAhcKVppJ/Human-trafficking-A-phone-call-to-the-heart-of-darkness.html>.

⁵ Nicky Mades, *Trafficking in the Tea Industry and What can Be Done About It*, Human Trafficking Centre Blogs, (April 01, 2015), <http://humantraffickingcenter.org/trafficking-in-the-tea-industry-and-what-can-be-done-about-it/>.

but receipt of these benefits remains inconsistent. There are many limitations that inhibit these individuals from receiving said benefits, such as the common practice by plantation owners of placing extremely high daily quotas on labourers. This often causes parents to bring their children to the fields to help with plucking.

The Plantations Labour Act, 1951 stipulates that the State Government requires every employer in the tea garden management to provide educational facilities to the children of plantation workers between the ages of six and twelve, and creches for the use of children who are below the age of six years. As is the case with most legislations in our country, the provisions of this Act too are not followed to the letter.

Most tea gardens in the state do not have the proper infrastructure for a school. Even if the infrastructure is in place, it is shoddy at best. The conditions of classrooms, desks/benches, water filters, and libraries (if any) is appalling; which is cascaded by an irregular power supply. Some schools do not have separate toilets for boys and girls, and the ones that do almost never undergo any maintenance. The teachers employed by the tea garden management are not at par with the National Council for Teacher Education (NCTE) or State norms, which hinders the possibility of providing quality education. The pupil-teacher ratio in tea garden schools isn't maintained as per regulation, since the teachers are employed in other part time positions simultaneously by the tea garden management. A difference between the children's mother tongue and the medium of instruction in their schools is a major reason for poor attendance and high number of dropouts. For children both of whose parents are workers in the tea garden, there is no monitoring of their arrival in school after their parents leave for work.

The fallout from this lapse in implementation of the Plantations Labour Act 1951 reflects in the form of violence against children in its worst manifestations. Since most tea gardens do not have upper primary schools, children of workers do not continue with their education beyond the lower primary level. The non-existence of creches means that the eldest girl child in the family has to take care of her siblings when her parents go to work.

While these two problems form a major chunk of the underlying causes of trafficking of children from tea gardens, there is a more basic cause that is not investigated enough: the concept of human agency. In sociology, agency is defined as the capacity of individuals to act independently and to make their own free choices⁶, more commonly known as free-will. While there is an alarming number of children that are abducted from tea gardens and nearby areas, and sold as cheap domestic labour by the middlemen, one also needs to stop and ponder about why children are willingly leaving their homes, lured away by men under the pretence of a "better life".

⁶ CHRIS BAKER, *CULTURAL STUDIES: THEORY AND PRACTICE* 448 (2005).

What leads to these children leaving their homes? A little bit of introspection reveals quite a few reasons. Most tea gardens do not have their own Upper Primary schools, since there is no provision of the setting up of these in the Plantations Labour Act 1951. A common Upper Primary school exists for multiple tea gardens, which owing to usually being at a considerable distance from the tea garden villages receive low attendance of students. A lot of children drop out after completing their Lower Primary education because of inaccessibility to Upper Primary schools. Both the Lower and Upper Primary schools have abysmal sanitation facilities, which leads to absenteeism among female students once they achieve puberty. The medium of instruction in these schools is also different from the dialect these families speak in their households. For children, in tea gardens or otherwise, school is seen as a burden since they would rather play with their friends during that time. Add to that the inability to understand what is being taught in school due to the language barrier, most children either drop out or regularly fail to attend school.

For a 14-18 year old in these circumstances, a job offer with a decent pay from an outside organisation is lucrative enough for them to willingly leave their homes to work with said organisation. These children are usually hired to work in exploitative environments, all of which violate the provisions of the Child Labour (Prohibition and Regulation) Amendment Act 2016.

Then there is the issue of girls. Traditionally, girl children in tea gardens are married off well before the legal age of 18. A study by Assam Branch of Indian Tea Association (ABITA) in Dibrugarh, a tea garden-intensive district, found that one-fourth of the respondents (4,100 parents) felt it was appropriate for girls to marry between the ages of 14 and 18. From an early age they are taught to cook, wash dishes and clothes, and look after their siblings.⁷ Most girls do not go to school, and the ones that do drop out more often than not. Since almost all of these marriages are arranged, these girls are married against their will to men that are complete strangers to them. Placement agencies prey on these girls. Tea gardens are visited by men claiming to be from “the neighbouring town” who familiarise themselves with pre-adolescent and adolescent girls in the villages. Under the veil of mental, and to a certain extent physical, intimacy these men give the impression of love and faithfulness to these girls and promise them a life of marital bliss if the girls agree to leave the tea garden with them. In all their innocence, these girls are convinced by such false promises and elope with these men. By the time the girl realises that the man is not who he claimed to be, she is too far away from home to be able to afford or even find her way back.

A portion of the blame also rests on the nonchalance of the parents towards the education of children. Some parents believe that investing in their children’s education is a waste of money because the once the child grows up they will work in the tea gardens like they and their ancestors have. Children sometimes

are thus forced to work in the fields even though they might have better prospects elsewhere. It is therefore not at all surprising that some children run away from homes when offered “better jobs” by traffickers posing as brokers of sorts to escape the drudgery of working in the tea gardens for the rest of their lives.

Conclusion

For years on end we have been trying diligently to protect and preserve the rights of the child. We have been trying to curb the presence of the traffickers and their organisations. While that is of utmost necessity, we simultaneously need to ensure that children while being brought up are taught that they should not be too trusting of strangers. Setting down strict rules that lead to punishments in cases of mild violations only leads to feelings of hostility and rebellion toward parents among the children. They should not be made to feel that they are always being forced into activities that are completely against their wishes. For a child to be brought up well, it is important for the child to understand for themselves that their parents while being their guardians and caregivers are also their friends. The environment in the households should be such that children know that they can talk to their parents about all and sundry.

The onus for ensuring this in their households lies on the parents. The onus for explaining to parents why they need to ensure this is our responsibility as members of the civil society and administrators. Policy measures should aim at changing attitudes of parents and guardians towards their wards. For example, the government should conduct regular awareness programmes to indoctrinate among the public the benefits of children’s education and the repercussions of child labour. Parents should be made to understand that investing in their children’s education today will lead to much better returns in the future than if they choose not to. Since poverty is an underlying cause of child labour, parents will be more inclined to send their children to school if they were sure it would lead to a financially more secure future. If parents are made aware of the harmful effects of work on children’s physical and mental development, they might feel reluctant to send their children to work.

In addition, changing the power structure within the household may also help in reducing the incidence of child labour. It is often the case in households in Assam, as in most parts of the country, that men have much greater say in the household than women due mainly to longstanding cultural practices or religious norms. Addressing the power imbalance between men and women in the household might lead to a reduction in child labour and early marriages of girl children. The government should therefore educate the public on gender issues and seek to advance the empowerment of women in the country.

Obviously, measures for poverty alleviation play an important role in reducing the incidence of child labour because household poverty is found to cause

⁷ Azera Rahman, *How They Are Battling Child Marriage in Assam’s Tea Gardens*, *The Better India* (Sept. 17, 2014), <https://www.thebetterindia.com/14394/battling-child-marriage-assams-tea-gardens/>.

child labour. In addition to such direct effects, poverty reduction may have indirect effects, for example, in that improvements in households' economic status allow parents to pay greater attention to their children's welfare, which in turn would contribute to a reduction in child labour.

DECIPHERING LEGAL SAFEGUARDS FOR CHILD SOLDIERS IN NORTH EAST INDIA VIS-À-VIS INTERNATIONAL STANDARDS

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Abstract:

With more than a third of its population below the age of 18, India has the largest child population in the world. However, India is no paradise for a child to live in irrespective of whether he or she is inside or outside the house. The Convention on the Rights of the Child, which was adopted by the UN General Assembly in 1989, has been ratified by India. Since the Convention is a set of international standards and measures intended to protect and promote the well being of children in society, the Indian legislature has also passed several legislations to give effect to them. However, a quarter century after the adoption of the Convention and its ratification by India it cannot be said that the Indian state has successfully provided protection to its children.

The North Eastern parts of India are no different and children in these areas are prone to a host of protection concerns. A prominent but no so popular malady is that of child soldiers. Instead of carving out a bright future in school, children are being taught to operate lethal weapons. However, the issue is not quite in focus as there is lack of actual documentation of cases of child soldiers. This is quite evident in the reply given by the Indian delegation in response to a question posed by an expert member of the Committee on the Rights of the Child during presentation of the combined third and fourth periodic report of India on its implementation of the provisions of the Convention on the Rights of the Child, and the initial reports of India on how the country is implementing the Optional Protocol to the Convention on children involved in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography. In response to a question on recruitment of children by non-State armed groups, the Indian delegation said that the Indian Government was aware from various non-governmental organization and media reports that non-state groups had resorted to the recruitment of children from the age of six years old and that there was no way to ascertain the number of children recruited due to the clandestine nature of the activities of those groups. The situation is further exacerbated by the fact that there is no government programme providing for the rehabilitation of former child soldiers into the mainstream. Armed with lethal weapons, addicted to alcohol and drugs, dependant on their recruiters, and unable to get away from their clutches, child soldiers are a classic case of being the victims as well as potential perpetrators.

There is a huge body of international humanitarian law and international human rights laws, which provides for a plethora of protections against recruitment of children as child soldiers. Nationally, India also has its fair share of laws governing the same. The point of focus of this paper is to decipher the adequacy and effectiveness of the same vis-à-vis international standards.

Keywords: *child soldiers; Convention on the Rights of the Child; India; humanitarian law; human rights law.*

Prolegomena

India has the largest child population in the world as one third of its population comprises those below the age of eighteen (18). However, India is no paradise for a child to live in irrespective of whether he or she is inside or outside the house. The Convention on the Rights of the Child which was adopted by the UN General Assembly in 1989 has been ratified by India. Since the Convention is a set of international standards and measures envisioned and intended to protect and promote the well-being of children in society, the Indian legislature has also passed several legislations to give effect to them. However, a quarter century after the adoption of the Convention and its ratification by India it cannot be said that the Indian state has successfully provided protection to its children.

The North Eastern parts of India are no different and children in these areas are prone to a host of protection concerns. A prominent but no so popular malady is that of child soldiers. Instead of carving out a bright future in school, children are being taught to operate lethal weapons. However, the issue is not quite in focus as there is lack of actual documentation of cases of child soldiers. This is quite evident in the reply given by the Indian delegation in response to a question posed by an expert member of the Committee on the Rights of the Child during presentation of the combined third and fourth periodic report of India on its implementation of the provisions of the Convention on the Rights of the Child, and the initial reports of India on its implementation of the Optional Protocol to the Convention on children involved in armed conflict as well as the Optional Protocol on the sale of children, child prostitution and child pornography. In response to a question on recruitment of children by non-State armed groups, the Indian delegation said that the Indian Government was aware from various media reports as well as non-governmental organizations that non-state groups were recruiting children as young as six years old and that there were no means of ascertaining the number of children recruited due to the clandestine nature of the activities of such groups. The situation is further exacerbated by the fact that there is no government programme providing for the rehabilitation of former child soldiers into the mainstream. Armed with lethal weapons, addicted to alcohol and drugs, dependant on their recruiters, and unable to get away from their clutches, child soldiers are a classic case of being the victims as well as potential perpetrators.

There is a huge body of international humanitarian law and international human rights laws which provides for a plethora of protections against recruitment of children as child soldiers. Nationally, India also has its fair share of laws governing the same. The point of focus of this paper is to decipher the adequacy and effectiveness of the same vis-à-vis international standards.

Child Soldiers: A Historical Overview

Historically, children have been considered as non-participants in armed conflict i.e. as non-combatants. They have been majorly looked at as innocents who are

in need of care and protection from the scourges of war.¹ Only married men, or those who had attained a certain age e.g. the age of eighteen or twenty could serve in tribal regiments in Africa.² In Europe, children served in the capacity of aides and support staff e.g. as pageboys to medieval knights; aides, charioteers and armour bearers to adult warriors; or as 'powder monkeys' who delivered cannon ammunition.³

The trend with regard to employing child soldiers started to shift globally with the establishment of Hitler Youth (Hitler Jugend), the paramilitary wing of the National Socialist German Workers' Party commonly referred to as the Nazi Party. It provided military training to boys between the ages of ten (10) to eighteen (18).⁴ These young boys were deployed to overcome the dearth of soldiers during the last phase of the Second World War.⁵ Children also fought with the Allied forces as well as participated in Resistance movements when the Holocaust was in its prime e.g. the youth organisation "Hashomer Hatzair" was instrumental in the 1943 Warsaw Ghetto Uprising.⁶

However, these incidents were rather exceptions as children were considered to be physically and emotionally incapable of performing the essential tasks required of active combatants or soldiers.⁷ With the advent of lighter and relatively simpler modern weaponry such as the AK-47, there was a paradigm shift in the concept of combatants or soldiers in that children came to be increasingly used. The Khmer Rouge regime in Cambodia was one of the first where very young children were trained as soldiers.⁸ The child soldier phenomenon further evolved with Cold War owing to the fact that the conflicts became increasingly domestic and fought along ethnic and religious lines.⁹ Since these conflicts commonly relied on guerrilla warfare, children proved to be an asset for the purposes of scouting and spying thereby increasing their demand.

Contemporary times are also replete with usage of children as soldiers be it the Iranian Holy War in the early 1980's when the then president Ali Akbar Rafsanjani declared that all Iranians from twelve (12) to seventy two (72) years of age should volunteer for the Holy War;¹⁰ or the intifada fighters of Palestine throughout the 1990's, 70% of which comprised children as little as twelve (12) years.¹¹

¹ H. Mann, *The International Child Soldier*, 36(1) INTERNATIONAL COMPARATIVE LAW QUARTERLY 32-57, 32 (1987); P. SINGER, *CHILDREN AT WAR* 10 (2005).

² T.W. BENNETT, *CUSTOMARY LAW IN SOUTH AFRICA* 5 (2004).

³ SINGER, *supra* note 1, at 12.

⁴ G. REMPEL, *HITLER'S CHILDREN: THE HITLER YOUTH AND THE SS* 50-61 (1990).

⁵ M.K. KATER, *HITLER YOUTH* 145 (2004).

⁶ R.L. Einwohner, *Opportunity, Honor, And Action In The Warsaw Ghetto Uprising Of 1943*, 109 AMERICAN JOURNAL OF SOCIOLOGY 650, 650 (2003).

⁷ SINGER, *supra* note 1.

⁸ H. LABAN, *ANNIHILATING DIFFERENCE: THE ANTHROPOLOGY OF GENOCIDE* 182 (2002).

⁹ A.B. Abbott, *Child Soldiers- The Use Of Children As Instruments Of War*, 23 SUFFOLK TRANSNATIONAL LAW REVIEW 499, 518 (2000).

¹⁰ SINGER, *supra* note 1, at 22.

¹¹ JULIE MCBRIDE, *THE WAR CRIME OF CHILD SOLDIERS* 6 (2014).

Child Soldiers And International Law

There is no one international instrument that safeguards the rights of children in situations of conflict. Protection for children during armed conflict is contained in two main bodies of international law, viz. international humanitarian law and international human rights law.

International Humanitarian Law

International Humanitarian Law comprises of the law laid down to regulate behavior of combatants during times of armed conflict, both international and non-international armed conflict. The standards set by international humanitarian law are found in the four Geneva Conventions of August 12, 1949¹² as supplemented by the two Additional Protocols of 1977.¹³

Additional Protocol Relating To The Protection Of Victims Of International Armed Conflicts, 1977 (Additional Protocol I)

Article 77 of Additional Protocol I provides protection for child soldiers. It clearly lays down that the parties to the conflict must undertake all feasible measures to ensure that children who have not attained the age of fifteen (15) years do not directly participate in hostilities.

The term 'all feasible measures' is subject to skewed interpretation, especially given the lack of definitional guidance provided by the treaty drafters.¹⁴ This single term has changed the spirit of the provision, from one, which should have been designed to protect children by all means necessary to one that is more concerned about military necessity. Such a low standard makes it easier to claim that it was not feasible to avoid involving children in conflict.¹⁵

Further, the bar on recruitment of children is not as strict. Although the Additional Protocol requires them to abstain from recruiting them into their armed forces, it goes on to say that while recruiting from among children between fifteen (15) to eighteen (18) years of age, they must attempt to give priority to those who are oldest.

¹² Convention for the Amelioration of the Condition of the Sick and Wounded in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135; Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

¹³ Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) June 8, 1977 1125 U.N.T.S. 3.; Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) June 8, 1977 1125 U.N.T.S. 609.

¹⁴ Mann, *supra* note 1, at 44.

¹⁵ Dundes A Renteln, Child soldier: the challenge of enforcing international standards, 21 WASHINGTON LAW REVIEW 191, 191 (2000).

This provision nevertheless recognizes the need to protect children. It lays down that children must be the object of special respect, be protected against any form of indecent assault and that the parties to the conflict must provide them with the care and aid they require, for any reason whatsoever.

The article also provides for cases where children under the age of fifteen (15) take a direct part in hostilities and fall into the power of an adverse party. It lays down that they continue to benefit from the special protection accorded by the article, whether or not they are prisoners of war.

The article further provides for procedure to be followed with children who are arrested, detained or interned for reasons related to the armed conflict in that they must be held in quarters separate from adults, except where families are accommodated as family units. Also, they are not to be awarded the death penalty.

Additional Protocol Relating To The Protection Of Victims Of Non-International Armed Conflicts, 1977 (Additional Protocol II)

Article 4(3)(c) of Additional Protocol II provides protection for children. It lays down that children who have not attained the age of fifteen (15) years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.

The article further provides for procedure to be followed with children prosecuted for criminal offence related to the. It clearly lays down children are not to be awarded the death penalty.

Article 4(3)(c) of Additional Protocol II results in significantly greater protection for children than Additional Protocol I as it does not talk of 'feasible measures'. The vague distinction between taking 'direct' part in hostilities and the rest is also absent as all forms of participation are prohibited. The fact that children are not 'allowed' to participate can be construed as a prohibition on accepting volunteers. Finally, the prohibition on recruitment is extended to incorporate groups in addition to armed groups.

International Criminal Law

International Criminal Law is a relatively new branch of public international law and is largely composed of the Charters of various international criminal tribunals and courts. It achieved a sense of permanence and stability through the establishment of the International Criminal Court in the twenty-first century.

Rome Statute of the International Criminal Court, 1998

The call for an International Criminal Court (ICC) was given right after the culmination of the Nuremberg and Tokyo trials. However, it was only in the twenty-first century that the idea turned into reality. The ICC primarily has the mandate to

exercise jurisdiction over four international crimes, viz. war crimes, crimes against humanity, genocide and aggression. The significance of the ICC lies in the fact that it has looked beyond the abstract called state and fixed individual responsibility for commission of ghastly crimes.

The statute refers to two separate instances where children are made soldiers. Article 8(2)(b)(xxvi) refers to international conflicts and provides as follows:

For the purposes of this Statute, “war crimes means...Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely any of the following acts... Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.”

Article 8(2)(e)(vii), on the other hand, refers to non-international or internal armed conflicts and provides as follows:

For the purposes of this Statute, “war crimes means...Other serious violations of the law and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely any of the following acts... Conscripting or enlisting children under the age of fifteen years into the national armed forces or group or using them to participate actively in hostilities.”

Thus, Rome Statute of the International Criminal Court has criminalized the conscription or enlistment of children under the age of fifteen (15) years into the national armed forces or into armed groups or using them to participate actively in hostilities as a war crime.

International Labour Law

The International Labour Organization (ILO) is one of the few surviving organizations from the days of the League of Nations. The ILO’s movement to eradicate child labour began to receive wide-reaching global attention during the 1990’s. The most significant contribution of the ILO to the gamut of law on child soldiers is the ILO Convention No. 182.¹⁶ On 16 June 1999, 174 Member States adopted it at the 87th Annual International Labour Conference. The Conference aimed at drafting a legal instrument that would postulate an authoritative list of the most exploitative or dangerous forms of child labour, including the forced recruitment of children for use in armed conflict, inter alia.

Article 3 outlines the ‘worst forms of child labour’ and includes ‘forced or compulsory recruitment of children for use in armed conflict’. An even greater significance lies in the fact that Article 2 provides that the term ‘child’ applies to ‘all persons under the age of eighteen (18)’.

¹⁶ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999, C 182.

This was not only the first time ever that a minimum age limit of eighteen (18) years was laid down for participation in armed conflict but also when child soldiers were recognised as child labourers.

This Convention was a significant step in the development of the legal framework on child soldiers because it was outside the closely-knit structure of human rights and humanitarian law. The prohibition on child recruitment thus became further embedded in the collective conscious of the global community.

International Human Rights Law

International Human Rights Law is a gamut of several conventions, declarations and optional protocols on several concerns of human rights viz. women, children, disability, torture etc.

Convention on the Rights of the Child

The idea of a United Nations treaty on children was first voiced in the late 1970’s.¹⁷ More particularly, it was the Polish government who were the first to acknowledge the need for such a document during the International Year of the Child in 1979. Accordingly, a working group was set up by the Commission on Human Rights to address the issue. The Convention on the Rights of the Child came into picture exactly ten years later in 1989.

The Convention unequivocally lays down that a child means “any human being below the age of eighteen (18) years unless, under the law applicable to the child, majority is attained earlier.”

Article 38 deals with the issue of child recruitment. It provides that States Parties should respect as well as ensure respect for international humanitarian law rules applicable during armed conflicts, which are relevant to the child.

States Parties are mandated to take all feasible measures to ensure that persons under the age of fifteen (15) years do not take a direct part in hostilities. Additionally, States Parties must themselves refrain from recruiting any person who has not attained the age of fifteen (15) years into their armed forces. In recruiting among those persons who have attained the age of fifteen (15) years but who have not attained the age of eighteen (18) years, States Parties must endeavour to give priority to those who are oldest.

While the provision is a combination of international humanitarian law and international human rights law, its categorization as an instrument of human rights law is beneficial in the sense that its applicability is extended to peace times as well as opposed to international humanitarian law which is only applicable during armed conflict. Another feature of the Convention is the absence of a derogation clause.

¹⁷ T. Hammarberg, The UN Convention on the Rights of the Child—and how to make it work, 12 HUMAN RIGHTS QUARTERLY 97, 98 (1990).

It is commendable because it is in the very circumstances where such derogation is typically permitted, viz. state emergency, civil war, where children are most at risk.

Unfortunately it is this article dealing with children in armed conflict that is commonly regarded as the weak link in its chain of protection as it merely repeated the failings of the Additional Protocols.¹⁸

Firstly, children between the ages of fifteen (15) and eighteen (18) have been removed from the Convention's protection, which is even more absurd given the fact that the Convention has defined children as every human being below the age of eighteen (18) years.

Secondly, while at the drafting stage the drafters intended to ban child recruitment below the age of eighteen (18) the same is not seen in the final Convention. The text of the article renders the protection of children from recruitment a matter of feasibility and not necessity. Phrasing the article in this manner is not only a critical failing of the Article but also has the effect of allowing military considerations to rank over considerations of child welfare.

Thirdly, it repeats the direct versus indirect distinction thereby providing protection to children only from direct participation in conflict in complete obliviousness of the many subsidiary roles played by children in a conflict.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000

The Optional Protocol clearly lays down that States Parties must take all feasible measures to ensure that members of their armed forces who are under the age of eighteen (18) years do not take a direct part in hostilities.

The Optional Protocol has divided recruitment into compulsory and voluntary. It obligates States Parties to ensure that persons under the age of eighteen (18) years are not compulsorily recruited into their armed forces.

However, the Optional Protocol is not as rigid when it comes to voluntary recruitment. It merely lays down that States Parties must raise the minimum age for voluntary recruitment of persons into their armed forces from fifteen (15) years as set out in the Convention on the Rights of the Child while recognizing that persons under the age of eighteen (18) years are entitled to special protection. An exception is provided in this regard to military academies.

Further, it mandates the States Parties to deposit a binding declaration containing the minimum age at which they will permit voluntary recruitment into their

¹⁸ Bueren G Van, The international legal protection of children in armed conflicts, 43 INTERNATIONAL COMPARATIVE LAW QUARTERLY 809, 816 (1994).

national armed forces upon ratification of or accession to the Protocol. If the age of voluntary recruitment is still below eighteen (18) years, States Parties are required to maintain certain safeguards, viz.

- such recruitment is genuinely voluntary
- such recruitment is done with the informed consent of the person's parents or legal guardians
- such persons are fully informed of the duties involved in such military service
- such persons provide reliable proof of age prior to acceptance into national military service

When it comes to armed groups, the Optional Protocol completely bars them from recruiting persons under eighteen (18) years of age or using them in hostilities, under any circumstances. It further mandates the States Parties to take all feasible measures to prevent such recruitment and use, including legal measures to prohibit and criminalize such practices.

The Optional Protocol talks about demobilization and recovery, which is praiseworthy. It provides that States Parties must take all feasible measures to ensure the demobilization of children recruited or used in hostilities to provide them with all appropriate assistance for their physical and psychological recovery and social reintegration.

Indian Laws On Recruitment Of Children

Indian laws regulating recruitment of children in armed forces can be broadly classified into two categories. On the one hand, there are laws and policies regulating recruitment by the Indian armed forces and on the other, those governing recruitment by non-State armed groups.

Laws And Policies Regulating Recruitment By The Indian Armed Forces

Constitution of India

The Constitution of India states in Article 51A(d) that "it shall be the duty of every citizen of India to defend the country and render national service when called upon to do so."

The Air Force Act, 1950; The Army Act, 1950; and The Navy Act, 1957

The Air Force Act, 1950; The Army Act, 1950; and The Navy Act, 1957 regulates recruitment into the Indian armed forces. None of these Acts, however, stipulate a minimum voluntary recruitment age. Further, persons who are recruited at the age

of sixteen (16) undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service.

The minimum ages found by the author for various sections of the Indian armed forces are as follows:

Indian Army - Seventeen years and six months (17½ years)¹⁹

Indian Navy - Seventeen years (17 years)²⁰

Indian Air Force - Sixteen years and six months (16½ years)²¹

Military academies

There are twenty-eight training institutes operated by the Armed Forces in India.²² Some of these have been described in the subsequent paragraphs.

Sainik Schools are located in various parts of the country and currently, there are twenty-two. Although these schools prepare boys to join the Armed Forces through the National Defence Academy (NDA), it is not compulsory for them to join the Armed Forces after graduating from a Sainik School. These schools admit boys into the VIth and IXth standard i.e. in the age group of ten to eleven years for VIth standard and thirteen to fourteen years for IXth standard.

The Rashtriya Military Schools²³ are residential schools for male students studying standards VIth to XIIth. There are a total of four in India currently. These Schools organize an all India entrance examination on the basis of which boys are admitted in the VIth standard. These boys are prepared to appear for the All India Senior School Certificate Examination (AISSCE) and, eventually, for joining the Armed Forces as officers. However, joining the Armed Forces is not compulsory for these students as well.

The National Defence Academy (NDA) is an inter-service training institute wherefrom the cadets proceed to their respective Service Academies on conclusion of this training for further training. On completion of the subsequent training, they are commissioned as officers into the Armed Forces. All the cadets joining the National Defence Academy (NDA) after completing their XIIth standard examination are trained for three years, concluding in graduation.

The Rashtriya Indian Military College acts as a feeder institute to the National Defence Academy. The intake is in VIIIth standard for male students in the age group of eleven to thirteen years. It prepares them for the examination conducted by the Union Public Service Commission for gaining entry into the National Defence Academy.

The Indian Military Academy (IMA) located in Dehradun aims at the utmost development of physical, intellectual and moral faculties of officers joining the Army.

¹⁹ <http://joinindianarmy.nic.in/Default.aspx?id=94&lg=eng&>, (last updated Aug. 19, 2017).

²⁰ http://nausena-bharti.nic.in/sailor_career.php, (last updated Aug. 19, 2017).

²¹ http://careerairforce.nic.in/index1.asp?id=43&ls_id=97&levl=2&level=2&lang=1&pid=92, (last updated Aug. 19, 2017).

²² Ministry of Defence, Gol, Annual Report (2007-08), Chapter 10.

²³ Earlier known as Military schools.

There are several modes of entry into Indian Military Academy (IMA), e.g. graduation from the National Defence Academy (NDA), graduation from Army Cadet College, 10+2 Technical Entry Scheme, etc.

Laws & Policies Regulating Recruitment By Non-State Armed Groups

The Juvenile Justice (Care and Protection of Children) Act, 2015

With the recent enactment of the JJ Act in 2015, the ever-persistent void in Indian laws with regard to recruitment of children by non-State groups has been taken care of. Section 83 of the Act criminalizes the use of children by militant groups or other adults.

“If any non-State, self-styled militant group or outfit declared as such by the Central Government recruits or uses any child for any purpose, they shall be liable for rigorous imprisonment upto a maximum of seven years and fine of five lakh rupees. Further, if any adult or an adult group uses children for illegal activities either individually or as a gang, they shall also be liable for the same punishment.”

Indian Laws vis-à-vis International Law

India ratified the Convention on the Rights of the Child on December 11, 1992. Further, India ratified the Optional Protocol on the Rights of the Child on the involvement of children in armed conflict on 30 November 2005, and entered into force on 30 December 2005.

A look at the laws governing recruitment by the Indian armed forces evidences that they are quite in consonance with the international standards.

The minimum age for recruitment into the Armed Forces of India is sixteen and half years. However, the recruits undertake training after enrolment and are deployed to the operational areas only after they turn eighteen (18). Ministry of Home Affairs as well as Ministry of Defence have stated that soldiers below the age of eighteen are not deployed in India.²⁴ They have further stated that the Fundamental Rights enshrined in the Constitution of India are adequate safeguards to preclude the State from compelling Indian citizens to enrol in the Armed Forces.²⁵ They added that there is no forced and coerced recruitment into the Armed Forces of India. Hence, article 2 of the Optional Protocol is not applicable to India.²⁶

Recruitment to the Indian Armed Forces is absolutely on voluntary basis and since, any person below the age of eighteen (18) cannot be directly inducted directly into the Armed Forces without undergoing training, the question of such persons taking direct part in hostilities does not arise at all.

The problem, however, lies with the recruitment of children as soldiers by non-State armed groups.

²⁴ F.No. 21-2/2000 CW, Ministry of Human Resource Development, Department of Women and Child Development, Gol.

²⁵ Ministry of Defence, Gol through letter dated 19 October 2005, D.O. No. 199/D (Coord)/2001.

²⁶ *Id.*

The Committee on the Rights of the Child completed its consideration of the combined third and fourth periodic report of India on its implementation of the provisions of the Convention on the Rights of the Child in 2014. It also finished examining the initial reports of India on the implementation of the Optional Protocol to the Convention on children involved in armed conflict and the Optional Protocol on the sale of children, child prostitution and child pornography in the same year.

With regard to the Optional Protocol on children in armed conflict, the Committee Experts had several questions pertaining to the minimum age for recruitment into the Armed Forces, military schools and the reported recruitment of children as soldiers by non-State armed groups. The Committee pointed out that there were non-State armed groups active in several parts of India that drafted children to take direct part in hostilities.

Several questions were also raised by the experts in the committee including whether children were being probed for being involved in armed action against Indian armed forces after being recruited as child soldiers; whether they had been detained because of their involvement with such non-State armed groups; whether there were any demobilization programmes, e.g. psychosocial support, reintegration and rehabilitation, for children who were victims of forcible recruitment by armed groups or military forces etc.²⁷

However, the Indian government's stand with regard to recruitment of children by non-State armed groups was very unfortunate because their ignorance, whether genuine or feigned was deplorable. The Indian delegation said that the Government of India was aware of media reports as well as had received information from various non-governmental organizations that non-state groups were recruiting children as little as six (6) and that there was no system to determine how many children had been recruited due to the clandestine nature of the activities of such groups. They further stated that any child found to be involved with an armed group and incidents of violence was treated as a child in need of care and protection and that there was a scheme to help rehabilitate and reintegrate such children. The truth cannot be far away from what was stated. With regard to north-east India there are several news reports which report to the contrary and point towards the prevalence of children being used as soldiers by non-State armed groups in states like Assam, Manipur, Meghalaya and Nagaland.²⁸

²⁷ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewID=14663&LangID=E> (last updated Aug. 19, 2017).

²⁸ Child Soldiers: The Untold Story, <https://eclecticnortheast.in/child-soldiers-untold-story/> (last updated Aug. 19, 2017); Is Assam ready to tackle 'child soldiers' of ULFA? <https://thenortheasttoday.com/tag/assam-child-soldiers/> (last updated Aug. 19, 2017); There Are at Least 500 Child Soldiers Fighting in Northeast India, and the World Hasn't Noticed, <http://time.com/33008/child-soldiers-recruited-into-northeast-india-insurgencies/> (last updated Aug. 19, 2017); Kids face the brunt in Assam, Manipur, https://www.telegraphindia.com/1141203/jsp/frontpage/story_19160769.jsp (last updated Aug. 19, 2017).

Nevertheless, there is a silver lining as well. The committee sought to know whether India considered passing a national legislation specifically criminalizing the recruitment of children below the age of eighteen (18) by non-State armed groups. The Indian Government replied in the affirmative and Section 83 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is evidence of the same in that it has criminalized the recruitment of children below eighteen (18) by non-state armed groups.

With regard to rehabilitation of child soldiers, the Government states that Section 2(14)(xi) of the Juvenile Justice (Care and Protection of Children) Act, 2015 that defines child in need of care and protection as is victim of or affected by any armed conflict, civil unrest or natural calamity, inter alia also encompasses child soldiers and the reliefs available are provided to the as well. The author feels that the needs of child soldiers are quite different from that of children who are otherwise affected by armed conflict. A comprehensive programme keeping in mind their education, economic and psycho-social needs is a must.

Conclusion

The menace of child soldiers exists worldwide and though the magnitude of it may not be numerically scary for India, the moral weight and gravity of the same cannot be denied. India seems to be compliant with most of the international standards. Nevertheless there are some areas that where we can catch up, the most prominent one being increasing the age of recruitment thereby making Indian provisions fully conforming to international human rights and humanitarian law standards.

THE SAGA OF RIGHT TO EDUCATION OF A SPECIAL CHILD: THE RPWD, 2016 PERSPECTIVE

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Abstract:

The society has been evolving and advancing in a tremendous speed in all its compasses. With the advancements in society, concurrently, the statutes and the legality of various issues are also changing. Based on a dynamic concept and with a new outlook on the disability issues, the Parliament of India has enacted the Persons with Disabilities Act, 1995 which has been recently amended and renamed as the Rights of Persons with Disabilities Act, 2016 (hereinafter, RPWD, 2016). The RPWD, 2016 provides that every child with disability shall have the right to free education. Further, the Act, in Section 16, states that children with disabilities must not be discriminated in getting admission in a government aided/recognized school. This indicates that all the schools are under a duty to allow a child with disability to take admission. Though, in an aerial perspective this provision can be categorised as propitious to the Preambular objective of social justice and equality; there emerges numerous hurdles which basically surrounded with the qualitative learning and protection of the child.

To teach a special child there must be specially trained teachers, caretakers in the school premises who are trained to be patient, careful and are able to communicate with the child. Special teachers, caretakers, caregivers etc. are also required for special children as they are more prone to abuses as firstly, in most of the cases they are not able to understand the nature of the abuse and secondly, they are not able to report the abuses committed to them. Which can further leads to annihilation of their health along with giving more and more chance to the person exploiting them to exploit more.

This paper is an endeavor to study such issues concerning the protection of special children in the school premises along with other allied and incidental disquiets based on an analysis of the RPWD, 2016. To understand the problem and to get the views of parents, caretakers, care-givers regarding the environment and situations revolving around the problem, the author have adopted the survey method and empirical study in various special schools and institutions of the state of Assam.

Keywords: RPWD Act, 2016; Rights of a Special Child; Right to Education.

Introduction

Education is a powerful instrument of social change, and often regarded as an important means to reduce the differences in the society. It helps in minimizing the gap between the different sections of society by empowering the less privileged. For this reason, the right to education has been internationally

recognized as a vital human right. It is indeed indispensable for the existence and exercise of other human rights.¹ A number of international instruments has been made to protect this human right. Article 26 of the Universal Declaration of Human Rights provides that everyone has the right to education.² The UNESCO Convention Against Discrimination in Education³ prohibits discrimination in the field of education and also expresses the principle of equality in educational opportunities. Article 1(a) of the Convention specifies that depriving any person or group of people of access to education of any type or at any level counts as an act of discrimination. Article 13 of the International Covenant on Economic, Social and Cultural Rights also covers the importance of right to education comprehensively.⁴ The United Nations Convention on the Rights of the Child⁵ enshrines the right to education as a right of the child⁶ and specifically addresses education of children with disabilities. Article 23(3) of the Convention specifies that State Parties shall encourage and ensure extended assistance that shall be designed to ensure that the children with disability has effective access to and receives education and trainings. This paved the way for inclusive education campaign in international level and the adoption of the United Nations Convention on the Rights of Persons with Disabilities⁷ is highly significant in this regard. As people with disabilities, including children, often remain victim of discrimination and deprived of equal opportunities due to lack of education; in paragraph 2 of Article 24, the Convention provides "In realizing this right (right to education), States parties shall ensure that: (a) persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability; (b) persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live."

The Constitution of India clearly states in the Preamble that everyone has the right to equality of status and opportunity. It ensures for all its citizens equality before the law⁸, non-discrimination⁹ and the right to life¹⁰. After a continual demand of making the education a fundamental right from all corners, the Parliament enacted the 86th Amendment of the Constitution of India. It introduced new Article 21A, making the right to education of children from 6 to 14 years of age a fundamental right. Article 51A (K) was added also to Part IVA of the Constitution as a fundamental duty of parents to provide

¹ B.J. Ackerson, Parents with Serious and Persistent Mental Illness: Issues in Assessment and Services, 48(2) JSW 187, (2003).

² Universal Declaration of Human Rights, Dec. 10, 1948, UNGA Res. 217 A(III).

³ UNESCO CADE, 1960.

⁴ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

⁵ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁶ Convention on the Rights of the Child art. 28-30, Nov. 20, 1989, 1577 U.N.T.S. 3.

⁷ Convention on the Rights of Persons with Disabilities, Jan. 24, 2007, A/RES/61/106.

⁸ INDIA CONST. art. 14.

⁹ INDIA CONST. art. 14 & 15.

¹⁰ INDIA CONST. art. 21.

opportunities for education to their children aged between 6 and 14. These provisions, however, do not specifically refer to persons with disabilities but are general in nature. Article 41 of the Constitution casts a duty on the State to support the right to work, to education and to public assistance in certain cases including disablement. Based on these international and municipal mandates the Parliament of India has enacted the Right to Education Act in 2009 which makes the task of providing education to a child (from 6 to 14 years of age) a duty of the State. Prior to this Act the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 casts a duty on the State to provide education to the children with disability in an adequate environment. Moving a further step ahead, the recently amended version of this Act¹¹ makes it compulsory for all government aided/recognised school to allow a child with disability to take admission in such schools. Though, in an aerial perspective this provision can be categorised as propitious to the Preamble objective of social justice and equality; there emerges numerous hurdles which basically surrounded with the qualitative learning and protection of the child. For example, to teach a special child there must be specially trained teachers, caretakers in the school premises who are trained to be patient, careful and are able to communicate with the child. Special teachers, caretakers, caregivers etc. are also required for special children as they are more prone to abuses as firstly, in most of the cases they are not able to understand the nature of the abuse and secondly, they are not able to report the abuses committed to them. Which can further leads to annihilation of their health along with giving more and more chance to the person exploiting them to exploit more. Therefore, through this article an endeavor has been made to study the feasibility of the right to education of the children with disabilities as reposed by the RPWD Act, 2016.

Research Methodology

The methodology adopted for the present work is empirical, analytical and descriptive. The author mainly depended on the primary sources like interview with parents, care givers, hostel owners, Principals of Schools and private tutors of children with special need and secondary sources like books, journals, articles, and case laws. Different Statutes, opinions of research scholars, experts in respective fields are used as real contribution to this work. Internet has provided with a major contribution of most relevant and latest information on the web which has helped the authors to explore the research problem through various dimensions.

Education of Special Children

Being a parent, caregiver or caretaker for children is a challenge for anyone, but, parenting or caring a special child presents a unique set of difficulties. Raising a child who is mentally or physically challenged requires emotional strength and flexibility and knowledge of managing them as well as patience to

¹¹ The Rights of Persons with Disabilities Act, No. 49, Acts of Parliaments, 2016 (India).

understand them. The children with disabilities has special needs in addition to the regular needs of all children, and parents can find themselves overwhelmed by various medical, care giving and educational responsibilities. The needs of the child may be minimal or complex and the parents are always concerned with the safety and security of their wards.¹² Therefore, special training and skill is needed for the caregivers and caretakers to maintain balance in the home and outside so that the child without being affected by abuses or harassment can completes his/her education and live a dignified life.

A child with disability may have more physician and other health-care appointments than a general child and may need close medical attention. The child may need to be watched to avoid inadvertent self-harm or being vulnerable to abuses. According to the RPWD, 2016 a child with disability is to receive free medical attention when needed and required equipment are provided by the government.¹³ These additional responsibilities can take a physical toll on a parent, caretakers and the care givers leading to exhaustion. The parent, caretakers and care givers of a child with developmental disabilities may have to deal with complex issues relating to education. In such a case a private education is sought if an adequate public education is not available. The parents often have issues regarding their child to receive a quality educational experience that will enrich her/him and make the child independent in the future. This often demands a good parental contact with the school authority, tutor and caregivers and teachers. The parents must monitor the child's interactions with others to ensure that he/she is not being bullied, harassed or abused.

This paper analyses the needs, concerns, requirements and measures in educating a child with disability and steps taken in this regard through the RPWD Act, 2016. This paper also concerns itself with the measures the care givers and the care takers take in assisting and educating a child with relation to what ought to be done according to the Act. The author also tries to analyse about the measures that are taken by the parents and caregivers in educating the children with disability about the sexual abuses.

History of Right to Education of Special Child in India

In this section the author wants to analyse few important national level legislation/policy frameworks in brief that are relevant as regards to education of children with disabilities.

1. Kothari Commission (1964–66): The Kothari Commission was the first policy initiative in independent India to address the issues of access and participation by all in educational institutions. It stressed a common school

¹² M. Kirshabnanand, A Disability Culture Perspective on Early Intervention with Parents with Physical or Cognitive Disabilities and their Infants, 13(2) JIYC 11 (2000).

¹³ The Rights of Persons with Disabilities Act, *supra* Note 11 at § 25.

system open to all children irrespective of caste, creed, community, religion, economic condition and social status. In 1968, the National Education Policy followed the Commission's recommendations and suggested the expansion of educational facilities for physically and mentally handicapped children, and the development of an 'integrated programme' enabling handicapped children to study in regular schools.

2. Integrated Education of Disabled Children (1974): Integrated Education of Disabled Children was a centrally sponsored scheme which aimed to provide educational opportunities to the 'not so abled' children. It has been regarded as one of the major initiatives from the Government of India to promote 'integrated education'. This centrally sponsored scheme provided educational opportunities for the disabled children in common schools, to facilitate their retention in the school system, and also to place in common schools, such children already placed in special schools after they acquire the communication and the daily living skills at the functional level.
3. National Policy on Education (1986): The National Policy on Education was drafted to bring the fundamental issue of equality in education at center stage. The Policy was aimed at to integrate the physically and mentally handicapped with the general community as equal partners, to prepare them for normal growth and to enable them to face life with courage and confidence. Rule 4.9 of the Policy clearly focuses on the needs of the children with disabilities.
4. Project for Integrated Education for the Disabled (1987): To execute the provisions for disabled children mandated by the National Policy on Education the government of India launched this Project. It was a joint venture of Ministry of Human Resource & Development and UNICEF. The Project aimed at 'wherever feasible, the education of children with motor handicaps and other mild handicaps in common schools with that of others'. The project was in fact, successful in bringing a sea change in the enrolment ratio of children with disability in common schools.
5. Plan of Action (1992): The National Policy on Education was followed by Plan of Action. The Action suggested a pragmatic principle for children with special needs. It postulated that a child with disability who can be educated in a general school should be educated in a general school only and not in a special school. Even those children who are initially admitted to special schools for training plus curriculum skills should be transferred to general schools once they acquire daily living skills, communication skills and basic academic skills.
6. Rehabilitation Council of India Act (1992): The Plan of Action was strengthened by the enactment of the Rehabilitation Council of India Act, 1992. Subsequent to its amendment in 2000, the Act wants to establish

a statutory mechanism for monitoring and standardizing courses for the training of 16 categories of professionals required in the field of special education and rehabilitation of persons with disability. Training of special educators and teachers that can offer support services to children with disabilities in common schools has also been dealt with by the Act.

7. District Primary Education Programme (1994): The success of Project for Integrated Education for the Disabled led to the inclusion of the component of Integrated Education of the Disabled in the District Primary Education Programme. This government of India funded Programme was launched in 1994 as an initiative to revitalize the primary education system and to achieve the objective of universalization of primary education. This Programme adopts a holistic approach to universalize access, retention and improve learning achievement and to reduce disparities among social groups. Its aim was to provide all children access to primary education through either the formal or non-formal stream. The Programme has made decisive impact on increasing enrolment, reducing stagnation and improving class-room transaction in the primary education of the country.
8. National Trust Act (1999): Another landmark legislation in this regard is the "National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999". This Act seeks to protect and promote the rights of persons who, within the disability sector, have been even more marginalized than others. Though the Act does not directly deal with the education of children with special needs; one of its thrust areas is to promote programmes that foster inclusion by creating barrier free environment developing functional skills of the disabled.
9. The Sarva Shiksha Abhiyan (2000-2001): In partnership with State governments to achieve the goal of universalization of elementary education government of India launched the Sarva Shiksha Abhiyan. It adopted a zero rejection policy in the schools and uses an approach of converging various existing schemes and programmes for the children with disability. The Abhiyan, inter alia, covers early detection and identification, education, aids and appliances, teacher training etc. for children with disability.
10. The Right to Education Act (2009): The Right of Children to Free and Compulsory Education Act, 2009, (commonly known as RTE) puts the responsibility of ensuring enrollment, attendance and completion of education of children from 6 to 14 years on the state. The Act also tries to safeguard the rights of the children belonging to the disadvantaged groups and the weaker sections, protect them from any kind of discrimination and ensure their completion of elementary education. As per amendment in the Act on 2010, children with disabilities have been included in the definition of child belonging to disadvantaged group in the Section 2(d) of the Act. The landmark step mentioned in the Act that Section 12(1)(c) mandates

for private unaided and specified category schools to admit at least 25% of its entry level class from children belonging to weaker and disadvantaged groups.

Thus, from the above we can say that the government has initiated many policies and laws for the inclusive education of the disabled children in India. However, the ineffective implementation of the same has still remained as a water mark in the history of education of a special child in India.

The RPWD Act, 2016 And Education of Children with Disabilities

The Parliament of India, in 1995 enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act for the protection and promotion of rights of disabled in India to fulfill its international obligation put by UNCRPD. The Act has been recently amended in 2016 by giving a new nomenclature as the 'Rights of Persons with Disabilities Act'. Education of disabled persons, on both the legislation got a conspicuous place. The recent version, however, is more flamboyant in this regard.

According to Section 7(1) of the Act the appropriate Government shall take measures to protect persons with disabilities from all forms of abuse, violence and exploitation and to prevent the same, shall take cognizance of incidents of abuse, violence and exploitation and provide legal remedies available against such incidents. The provision further says that any person or registered organisation who or which has reason to believe that an act of abuse, violence or exploitation has been, or is being, or is likely to be committed against any person with disability, may give information about it and the appropriate government or local body shall take immediate steps to stop or prevent its occurrence.

Section 16 of RPWD Act, 2016 casts a duty on the appropriate government and the local authorities to endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities. The provision further adds that to achieve the goal set by the Act the school shall –

- (a) Admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others,
- (b) Make building, campus and various facilities accessible to a disabled child,
- (c) Provide reasonable accommodation according to the individual requirements,
- (d) Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion,

- (e) Ensure that the education to persons who are blind or deaf or both is imparted in the most appropriate languages and modes and means of communication,
- (f) Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them,
- (g) Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability,
- (h) Provide transportation facilities to the children with disabilities and also the attendant of the children with disabilities having high support needs.

According to Section 17 of the RPWD, 2016 the appropriate Government and the local authorities shall take measures to conduct survey of school going children in every five years for identifying children with disabilities and ascertaining their special needs establish adequate number of teacher training institutions to train and employ teachers. This provision also mandates the government to train professionals and staff to support inclusive education at all levels of school education, to establish adequate number of resource centers to support educational institutions at all levels of school education, to promote the use of appropriate augmentative and alternative modes including means and formats of communication to enable children with disability to participate and contribute to the society.

From the above we can conclude that the Act has encapsulated novel initiatives toward the inclusive education of children with disability and there is no doubt that it will open up gates for easy access of education for a child with disability. But, the legislature forgot that a special child may have little difficulty in coping up with his/her abled classmates and might get bullied after exposure to people without any disability. The children with disabilities may be curious and fearful of rejection and respond in many ways, which on one hand can give an upper hand to wrong doers hidden in school premises as they would know the weakness of the child and how to exploit them. The authorities of the school and care takers and caregivers need to play a very crucial role in the educating all the students with disabilities about how others should behave with them, their responses and reaction to something unexpected and abusive and most importantly to report or speak up to either parents or caretakers regarding any occurrence. The Act is unable to address such issues.

Field Observation

As the RPWD Act, 2016 advocates for inclusive education for the children with disability a need has arisen to look at the existing special schools and schools with special children to assess and analyse the prevailing environment. As the special child needs special care and attention, the author mainly ventured into the special schools and tried to understand the safety concerns of children with disability. For this purpose a random sample of parents, caregivers, teachers of schools where special and inclusive education has been given is approached.

They were asked several questions pertaining to the issue of inclusive education and its effectiveness.

Firstly, it is very sad to find out that even today apart from so much of development and education in our society many children who suffer with disabilities are socially unaccepted. There is always constant fear in the minds of the parents as to how their child is at school or whether they are able to mingle up and adjust with the fellow students normally. When inquired about educating children about sexual abuses and other dangers as the special children are more prone to such incidents, it was stated by Dulumoni Kalita¹⁴ and Kumud Kalita¹⁵ that their first need is not to learn to save themselves from these incidents but to stand in their feet and be eligible to mix up with the normal society. They further added that they take special care about these things when they are in school and hostels but when they are home, it's their parent's duty to explain them, giving education and teaching daily living skills are the tasks performed by the school.

Secondly, it was learned after the interaction with parents of children with disability that the parents are aware about the possible sexual and physical abuses and try to keep the children away from those incidents. However, proper education regarding this are not given with a fear that the children might want to know more and the norms of the society does not allow children to learn so much at that age. Especially, when it comes to special child, the parents are more protective in keeping the mind of the child away from such issues. When asked to a parent of a hearing impaired child¹⁶ and a parent of an autistic boy¹⁷, it was noticed that many times it is difficult for the parents and even school teachers to explain questions which arise in mind of the child after they try to explain and educate them about abuses. Parents and School caretakers added that it is sometimes difficult to make them understand things or explain properly, which creates confusion in the minds of children, as the special children are generally more curious to know things.

Thirdly, it has come to the knowledge of the author that generally the parents and sometimes the elders, tried to take measures like to teach them to inform if any touch is felt in inappropriate areas of body, the special children do not accumulate the information properly taught to them. Some even at times refuse to learn the dos and don'ts when taught. Sometimes they forget what has been taught, like how to react when actually such incidents happen. So, parents normally keep their child away from such gatherings, or does not allow the child to move around alone and always try to be along with their child. The Rights of the children will firstly have to be known by the parents in order to help implementation of provisions of the RPWD Act, 2016, but it was found that

¹⁴ Head Mistress and Warden, Saraswati Bagdhvani High School, Guwahati.

¹⁵ Director and Owner, Tapouban Special Home for Children, Guwahati

¹⁶ Identities are not disclosed on request.

¹⁷ Identities are not disclosed on request.

the parents mostly are unaware of the rights of their children and they just send children to school because education is necessary and everyone is sending their children to school.

Fourthly, proper channel for educating the children with disability regarding the issues mentioned has not been practiced in any of the institutions visited. It was stated to us by Bhaben Barman¹⁸ and Devis Das¹⁹ as they did not find it that much necessary to educate the children about the possible sexual and physical abuses. For them, educating the child and making him/her independent in future life is more important. It was also stated by many tutors and teachers that it is already a difficult task to teach them what a regular curriculum is and if on top of that teaching these things come up, it will create a lot of difficulty.

Fifthly, the reluctance and the discomfort of the parents make a barrier in the mindsets of the children that these things are not to be talked about or shared with. The children feel embarrassed to open up to parents and caretakers about such incidents giving the wrong doers more power and the child further getting more exploited. These also results to further making the child more timid and silent. These can also leads to further different disability, mental depression and mental trauma to a child with disability.

These reasons, according to the author, will results as lack in implementation of the RPWD Act, 2016. Even though, provisions are incorporated for protection and security of special children under the Act. It can be stated that due to these reasons the children are not receiving adequate environment therefore, it is the duty of all the stakeholders to knowledge about the same and take appropriate steps to overcome such issues to make the provisions of RPWD Act, 2016 regarding education of disable persons a big success.

Conclusion

There are changes which need to be made in routine regarding the dealing with a special child. Whether the case of disability is mental retardation, cerebral palsy, traumatic brain injury, down-syndrome, amputation or learning disabilities; dealing and adjusting to the problems that come with children with special needs is always the task of great patience and endurance. For those who care for them daily i.e., parents, care givers and care takers most certainly build up over time, but sometimes letting a person learn over the special child and then take care of that special child becomes like an experiment. This can be stated as one of the foremost reason for the inclusion of provisions requiring specially trained teachers and care takers to teach a special child in schools under the RPWD Act, 2016. This has to be follow even if a single child with special needs is has taken admission in the school. This paper, however, has demonstrated, many of the problems and impacts on children with disability regarding teaching them about abuses and measures to prevent abuses. As far

¹⁸ Principal, Blind School, Guwahati.

¹⁹ Principal, Government B. D. Deaf and Dumb School, Guwahati.

as the safety of a disabled child in school is concerned the parents, teachers and care givers need to pay more attention to their comfort with other students and people in the school. The school counselors and authority (teachers, principal) can help in easing up education about abuses for the benefit of students with disabilities and their families.

Educating the children in schools and educating parents regarding the protective measures is must for the fruitful implementation of the Act. One can't always tell or ask a child with disability about these things but always can warn them about things that may occur and respond kindly about their enquiries and their demands for knowing more. If a child seems to be struggling expressing something, ask politely with a protective intention and care. As laid down by the RPWD Act, 2016, special educators must also train and must be taught about special ways to easily teach the children regarding possible abuses and its measures. Different stakeholders and parents also through various methods like: play works, games and stories can try to express what is necessary and provide the needed information in an understandable way to the children with disabilities to stay safer.

THE PROBLEM OF CHILD PORNOGRAPHY IN THE STATE OF ASSAM: AN ANALYTICAL STUDY

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Abstract:

Advancement of technology is like a two sided sword especially for the most vulnerable section of the society i.e. the children. With the rise of Cyber Crimes in India, an unexpected rise in the cases of Child Pornography has been experienced in consonance with the worldwide trend. Child Pornography is a heinous sexual offence against the Children with the use of electronic tools. According to 2015 Statistics, as published by PORNHUB, probably the biggest pornographic website in the world, the word "teen" is a consistent feature in its most popular search terms. Child Pornography is a recognised crime in India under Information Technology Act, 2000 and Protection of Children from Sexual Offences Act, 2012. Assam secures very interesting data with regards to Child Pornography. In the year 2102, no cases were reported against pornography but there was a sudden 100 percent rise in the year 2013 and with 111 cases registered.

The situation of rise in Child Pornography in India has led to the disappointment of the Supreme Court which expressed its unhappiness over the government's inability to block sites, especially those featuring child pornography in July 2015. Again, The Supreme Court in the month of March 2017, constituted a high-level committee comprising senior government officials and representatives from social networking sites to explore ways to stop child pornographic material getting uploaded on social networking sites.

Through the course of the paper the author firstly builds up the argument that Child Pornography is serious cyber crime against children. secondly the analysis of the legal framework available in India has been highlighted with statistical analysis of the contemporary issues providing an special emphasis to the rise of such cases in the state of Assam with the help of the reports and data released by various institutions and statutory bodies such as Assam State Commission for Protection of Child Rights, thirdly the paper concludes with the critical approach to the Government initiatives taken in this account and the role of judiciary in this regards with suggestions as to how to implement the mechanism in a more efficient and effective manner.

Keywords: Child Pornography, IT Act, Cyber Crimes, POCSO, Child Sexual Abuse Material (CSAM)

Introduction

Advancement of technology is like a two sided sword especially for the most vulnerable section of the society i.e. the children. Technological developments

have given a rise to the problem of Child Pornography and the impact has been seen as a shift towards using the cyberspace for transmitting the related content which makes it easier to be accessed by the public at large. Child Pornography is not an issue independent to the issues of Child Trafficking, Child Prostitution, Sexual Abuse of Children and many more connected factors.

The treatment of children as sexual objects has existed through the ages, and so too has the production of erotic literature and drawings involving children. However, pornography in the modern sense began with the invention of the camera in the early nineteenth century. Almost immediately, sexualized images involving children were produced, traded, and collected.¹ The focus of the problem of Child Pornography is the effect a violation of the portrayed person's rights rather than the effect on the public at large. The basic area of concern here is regarding its impact on the children who are being depicted in such pornographic materials. Children in their tender age have an immature mind and lack of serious thinking, are the most effected victims of this act. Use of children in such pornographic materials does not only implicate the physical harm but also pose emotional and psychological trauma upon the minor victims.

Child Pornography is a heinous sexual offence against the Children with the use of electronic tools. In the simplest possible way, the act of Child Pornography may be defined as the act of using cyberspace to create, display, distribute, import, or publish pornography or obscene materials. Law Dictionary defines it as a work or production which depicts children engaged in sexual activities.² Child Pornography is becoming more and more popular in the internet driven world today. According to 2015 Statistics, as published by PORNHUB, probably the biggest pornographic website in the world, the word "teen" is a consistent feature in its most popular search terms.³ The advent of Social Media which has revolutionize the cyber world, is another most important contributing factor in rising incidents of Child Pornography. Social Media is an easy tool to publish, transmit and access the pornographic content as it is the most convenient form of communication today. Popularity of Social Media, especially among the youths have contributed in the spread of Child Pornography and has hit the internet by floods of such images and videos. Bengaluru Police recently found that at least 15% of minors using the internet and social media have come across video clips and images relating to child porn.⁴

¹ 41 RICHARD WORTLEY & STEPHEN SMALLBONE, CHILD PORNOGRAPHY ON INTERNET 5 (Centre for Problem Oriented Policing, 2006).

² P. Ramanatha Aiyer, Concise Law Dictionary 195 (5th ed. Lexis Nexis, 2014).

³ Pornhub Insights, Pornhub (Aug. 02, 2017, 10.05 A.M.), <https://www.pornhub.com/insights/women-gender-demographics-searches>.

⁴ Rajiv Kalkodi, 15% of Minors come across Child Pornography, The Times of India (Aug. 01, 2017, 01.05 P.M.), <http://timesofindia.indiatimes.com/city/bengaluru/15-of-minors-using-net-social-media-have-come-across-child-pornography-say-police/articleshow/59047085.cms>.

Apart from the International Law available to deal the issue in concern, there is a strong legal framework available in India to address the issues of Obscenity in general and Child Pornography in Particular. The laws such as Indian Penal Code, 1860 and Protection of Children from Sexual Offences Act, 2012 contain the provisions of criminal liability in such cases. Because the offence of Child Pornography is usually connected to the Cyberspace, to tackle such cases as a Cyber Crime, the liability is provided under the Information Technology Act, 2000. The situation of rise in Child Pornography in India has led to the disappointment of the Supreme Court which expressed its unhappiness over the government's inability to block sites, especially those featuring child pornography.

Assam secures very interesting data with regards to Child Pornography. In the year 2012, no cases were reported against pornography but there was a sudden 100 percent rise in the year 2013 and with 111 cases registered. It is believed most of the female children who absconded their homes in Assam, show up in pornography made in local hotel rooms in Delhi, Punjab and Haryana.⁵ The state of Assam has many unregistered children homes, the concerns regarding which have been expressed by Hon'ble Mr. Justice Madan B. Lokur saying that these homes may resort to trafficking of children, sexual abuse, child pornography and other crimes against children.⁶ Various stakeholders such as the Government, its institutions, Cyber Crime Cell and Non Governments organization active in the state have an important role to play to curb our this problem from the state.

Indian and Global Trends

The instances of Child Pornography are considerably increasing at both the national and international levels. With the rise of internet, it has become easier to have access to Child Pornography. Moreover, it has become a business at a large scale. "There are no limits to how cruel and gross this business is—and it's a billion, billion-dollar business," said Lotta Sylwander, head of the UN children's agency UNICEF in the Philippines.⁷

Although many countries including Canada Japan Australia Malaysia Sweden, United Kingdom, United States and India have banned Child Pornography in their respective states and have passed domestic laws in this regards. Still it is a big global trend as 92% of all child sexual abuse URLs identified globally in 2016 were hosted in these five countries: Netherlands, Unites States, Canada,

⁵ Clayton A. Hartjen & S. Priyadarsini, The Global Victimization of Children: Problems and Solutions 143 (Springer 2012).

⁶ Sumir Karmakar, Rehabilitate victims: SC judge, The Telegraph (Aug. 02, 2017, 11.55 A.M.), https://www.telegraphindia.com/1161127/jsp/northeast/story_121572.jsp.

⁷ Philippines is No. 1 global source of child pornography, The Manila Times (Aug. 02, 2017, 11.28 A.M.), <http://www.manilatimes.net/philippines-is-no-1-global-source-of-child-pornography/267148/>.

France & Russia. UNICEF says the Philippines is “the number one global source of child pornography” and the “epicenter of the live-stream sexual abuse trade.”⁸

With the rise of Cyber Crimes in India, an unexpected rise in the cases of Child Pornography has been experienced in consonance with the worldwide trend. As per the information delivered to the Parliament by the concerned minister there were total 99 cases in 2007, 105 in 2008 and 139 case of Child Pornography registered in India.⁹ As per the reports of National Crime Records Bureau total 96 cases were reported of children being sexually exploited in internet imagery in 2015 which marks a rise of 114 per cent from 2014.¹⁰ Recently, in January 2017, a 42 year old US citizen was arrested in Hyderabad by the Crime Investigation Department of Telangana on the charge of circulating Child Pornography on the internet. Several thousands of Child Pornographic images and videos were found in his laptop and iPhone, as per the officials.¹¹ These rising levels of Child Pornography are attracting the concerns of Civil Society and Judiciary in India. The issues like Lack of empirical data and non-reporting of such crimes are important hurdles in order to bring the actual statistics of Child Pornography in the country.

Child Pornography in Assam: A Scenario

The State of Assam has its peculiar issues relating to exploitation of Child Rights. The adult pornography cases mark a 100 percent hike in 2013 in the state.¹² Assam has emerged as the biggest trafficking hub of the country with the highest number of cases of Child Trafficking, as per the latest data released by the National Crime Records Bureau for the year 2015.¹³ The Child Abuse cases including the cases of Sexual Abuse of the Children are also on its hike in the State. The distinct geographical location of the state is an important factor for such increase in these cases. Usually, these offences of Child Trafficking and Child Sexual Abuse are considered as the contributing factors of Child Pornography in general. Child pornography in particular is documented child sexual abuse. Victims of Child Trafficking have stronger possibility to be sexually abused and made an object of Child Sexual Abuse Material (CSAM).

There is a clear lack of official data regarding the actual statistics of the Child Pornography cases in the State of Assam. According to the National Crime

Records Bureau Report 2015, there is not a single recorded case of Child Pornography in the state of Assam.¹⁴ The lack of reporting of such cases is the leading reason as to non availability of the data. Though, the factual situation is altogether different. Most of the pornographic websites are flooded with Child Sexual Abuse Material (CSAM), which Assamese Teens have been used as objects of. Though, there is no any official record of such websites or availability of such material on the websites but one google search is enough to know the real factual situation.

Interestingly, in the Month of May 2017 two cases were registered under the laws against Child Pornography which have relation with the State of Assam. These two cases got so much attention in the headlines of local and national media. In the first case, the crime was allegedly committed in Assam also, though, the accused was arrested by the Cyber Cell of Mumbai Police. The cybercrime investigation cell of the Mumbai Police arrested a 42 yr old Lieutenant Colonel of the Indian Army, for allegedly uploading obscene pictures of children on internet. As per the information received by the media from the police officials, it was made clear that during his posting in Assam in 2007, he started surfing child pornography and video clippings of Children doing sexual acts. The accused person confessed downloading of child porn due to curiosity without any intention to harm anyone. As per the newspaper report, total around 250 such clipping has been found by the investigators on his hard disk and the children portrayed in such clipping fall in the age group of 3-15 years. It is a reasonable suspicion according to the cybercrime investigation cell that the accused person has published and transmitted child pornographic material on a German website for monetary gain.¹⁵ The factual description of this case makes it clear that the person accused committed the crime while he was posted in the state of Assam but was caught only by the Mumbai Police after almost seven years of commission of crime in the state of Assam.

The most important case which attracts the concerns regarding the problem of Child Pornography in the state, was first reported on May 24, 2017. It is the first time that in any case of Child Pornography, the state security agencies received the specific inputs from any International Agency. The American Intelligence & Security Services Agency FBI (Federal Bureau of Investigation) recently shared a secret information regarding running of an online child pornography trade in the state of Assam. The communication in this regard was made to the Assam police's criminal investigation department via the Central Bureau of Investigation. The agency provided the particular inputs regarding a person who is directly indulged in the child pornography trade of the Assam. This grievous matter was investigated by FBI in details and was subsequently informed to the Indian investigation agency CBI.

¹⁴ *Id.*

¹⁵ Manteen Hafeez, Boredom drove him to Crime, The Times of India (Aug. 03, 2017, 03.35 P.M.), <http://epaper.timesofindia.com/Default/Layout/Includes/EDU/ArtWin.asp?From=Archive&Source=Page&Skin=EDU&BaseHref=TOIM%2F2010%2F05%2F09&ViewMode=HTML&PageLabel=3&EntityId=Ar00303&AppName=>.

⁸ *Id.*

⁹ Child Pornography Arrest Increasing in India, PRI (Aug. 02, 2017, 04.55 P.M.), <https://www.pri.org/stories/2011-08-31/child-pornography-arrests-increasing-india>.

¹⁰ Crime in India 2015 Statistics, National Crime Record Bureau (Aug. 02, 2017, 11.02 A.M.), http://ncrb.nic.in/StatPublications/CII/CI2015/FILES/Statistics-2015_rev1_1.pdf.

¹¹ American man arrested in India for circulating child pornography, Northeast Today (Aug. 02, 2017, 10.48 A.M.), <https://thenortheasttoday.com/american-man-arrested-in-india-for-circulating-child-pornography/>.

¹² Devesh K. Pandey, Pornographic Cases up 100 per cent last year, The Hindu (Aug. 02, 2017, 04.25 P.M.), <http://www.pressreader.com/india/the-hindu/20140807/281496454431162>.

¹³ *supra* note 10.

This is the very first time that the online child pornography trade in India has received such specific inputs from any other foreign state. A senior Assam police official expressed his concerns to the reporter saying that these offences such as publication and transmission of obscene material including child pornography fall under the information technology act but reporting of such cases is still unheard in the state.¹⁶ This particular case is not only related to Child Pornography but a big racket has been exposed which was indulged into the trade of Child Pornographic Material in the state of Assam. Indulgence of the foreign investigating agencies shows the gravity of the problem and its widespread impacts. The case is under the investigation by the State Security Agencies of Assam.

There are various organizations which are working in the field of Child Rights Protection in general including the protection of Children from Child Pornography in the state of Assam. These stakeholders include the Assam State Commission for Protection of Child Rights (ASCP CR), UNICEF, Child Line, Gram Vikas Parishad and many more governmental and non-governmental organisations.

Recently, Gram Vikas Parishad, a reputed NGO working in the field of Child Rights in the state of Assam and a state coordinating agency of Child Line Mumbai, conducted the mapping and review of all CCI (Child Care Institutes) and Women Shelter Homes in 12 district of Assam. In this regards, the survey was successfully conducted with representatives of Deputy Commissioner of Particular district. At the time of visit, not a single victim of child pornography was found in any of such districts of Assam. This report has been submitted to Child Line India Foundation in Mumbai.¹⁷

The State of Assam has many unregistered has many unregistered children homes. These unregistered institutions may resort to and become a centre of many children related crimes including Child Pornography. While addressing a seminar on Child Rights, Hon'ble Mr. Justice Madan B. Lokur expressed his concerns regarding possibilities of Trafficking of Children, Sexual Abuse, Child Pornography and many related crimes in and from such institutions.¹⁸ The Government of Assam and The Assam State Commission for Protection of Child Rights have taken certain initiatives in order to register such institutions under Juvenile Justice Act. The increasing instances of Child Pornography by using multimedia mobile phones have alarmed the state investigating agencies. The police have been receiving complaints of cell phones being misused for sending abusive, threatening, alarming and pornographic messages.¹⁹ In order to tackle the situation, the Assam police has decided to set up a "mobile phone forensic laboratory" to help investigate crimes that involve the use of cell phones initially in the seven police ranges and

later in each district headquarters. A special training to the officials has also been proposed to run these laboratories.

The Assam State Commission for Protection of Child Rights has accepted it as a mandate to 'Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riot, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures' under its point number (d).²⁰ By placing it in one of the mandates, the commission has recognised the importance of the problem of Child Pornography in the state and has given an expression of their intention to strongly address the problem.

Legal framework in India

India is a signatory to various International Instruments relating to Child Pornography. The Convention on the Rights of the Child, 1989 under Article 34 obligates the State parties to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of the Children in pornographic performances or materials. The Optional Protocol to the Convention on the Rights of the Child on the Sale of the Children, Child Prostitution and Child Pornography which came into force on 18 January, 2002, in its Preamble expresses concern at the significant and increasing international trafficking and children for the purposes of the sale of children, child prostitution and child pornography.

Child Pornography is a criminal act in India specifically recognized under The Information Technology Act, 2000 and Protection of Children from Sexual Offences Act, 2012. While the former provides the 'Punishment for publishing, recording etc. of the material depicting children in sexually explicit act, in electronic form', the latter explains the 'Use of Child for pornographic Purposes' and provides the punishment thereof. Furthermore, of the Indian Penal Code, 1860 and The Constitution of India also contains the indirect provisions regarding protection of Child from pornographic activities.

The Information Technology Act was amended via the Information Technology (Amendment) Act, 2008 and a new provision was introduced specifically regarding Child Sexual Abuse Material (CSAM) in electronic form under the head of Section 67 B. The said section provides the punishment on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

¹⁶ Sanjoy Ray, FBI tips off State Police to probe online Child Porn, The Assam Tribune (Aug. 03, 2017, 03.07 P.M.), <http://www.assamtribune.com/scripts/detailsnew.asp?id=May0517/at057>.

¹⁷ This data has been supplied to the Author in good faith by Gram Vikas Parishad, a prestigious NGO in Assam and producer of the said data, to be used purely for academic purposes.

¹⁸ *supra* note 6.

¹⁹ Cell Phone Forensic Lab in Assam, The Telegraph India (Aug. 03, 2017, 04.18 P.M.), https://www.telegraphindia.com/1170206/jsp/northeast/story_134236.jsp

²⁰ Assam State Commission for Protection of Child Rights (Aug. 03, 2017, 02.17 P.M.), http://assamchildrightscommission.gov.in/mandate_commission.php.

Chapter – III of The Protection of Child from Sexual Abuses Act, 2012 is comprised of Section 13 and 14. Section 13 explains the act of using the child for pornographic purposes and Section 14, which is a charging section, provides the punishment for an act covered under Section 13. It provides minimum punishment of six years of imprisonment with fine and maximum punishment of rigorous imprisonment for life with fine, depending upon the gravity of crime committed under the heads of sub sections (1) to (5).

Role of the Indian Government and Judiciary

Increase in numbers of these cases has created the pressure from the Civil Society and Judiciary of India. The Central Government has decided to take help of International Agencies like INTERPOL and Internet Watch Foundation (IWF) and with the help of these bodies, the Central Government has blocked in July 2017, total of 3522 websites containing the Sexual Abuse Material (CSAM) contents.²¹ Other than the aforementioned measure, the Government had also formed an Inter-Ministerial Committee in the year 2016, which would after its assessment process, make recommendations to the Government as regards the specific solutions to address the issue of child pornography in India. Additionally, an internet hotline named “Aarambh India” went live, a first of its kind hotline²², which is aimed at curbing the surge in photographic and video content on the internet depicting instances of children being sexually abused and thereby making internet a safer and secure place for sharing information.

A Public Interest Litigation petition was filed by an Indore based lawyer seeking complete ban on pornography in India in the Supreme Court.²³ The Apex Court after expressing its inability to put a complete ban on Pornographic Material²⁴, utilized this PIL to curb the problem of Child Pornography in India. The situation of rise in Child Pornography in India has led to the disappointment of the Supreme Court which expressed its unhappiness over the government's inability to block sites, especially those featuring child pornography in July 2015.²⁵ Further, the Supreme Court in February 2016 directed the Centre to block all child pornography websites, and told the government that the excuse of technical difficulty in banning such sites would not be accepted as a ground for failure to comply with its order.²⁶

²¹ Harish V. Nair, Government ropes in Interpol to help crackdown on child pornography, India Today (Aug. 03, 2017, 02.36 P.M.), <http://indiatoday.intoday.in/story/child-pornography-sexual-abuse-internet-interpol-crackdown/1/834815.html>.

²² India's First Hotline to Report Child Pornography, The Times of India (Aug. 04, 2017, 08.03 P.M.), <http://timesofindia.indiatimes.com/india/Indias-1st-hotline-to-report-child-pornography-goes-live-next-week/articleshow/54314025.cms>.

²³ Kamlesh Vaswani v. Union of India and others, Writ Petition (civil) No. 177 of 2013.

²⁴ Harish V. Nair, Supreme Court says India Can't ban Porn, DAILYMAIL (Aug. 03, 2017, 05.33 P.M.), <http://www.dailymail.co.uk/indiahome/indianews/article-3153957/Supreme-Court-says-India-t-ban-porn-CJI-says-total-ban-sex-sites-violate-privacy-personal-liberty.html>.

²⁵ *supra* note 23.

²⁶ *Id.*

The Supreme Court took suo motu cognizance of a letter written by Sunitha Krishnan, founder of the NGO Prajwala and converted it into a PIL. In month of March 2017, the bench comprised of Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice Uday Umesh Lalit constituted a high-level committee comprising senior government officials and representatives from social networking sites to explore ways to stop child pornographic material getting uploaded on social networking sites in response to the said PIL.

Conclusion and Suggestions

Child Pornography has taken a different track and a more grievous form since the advent of the internet. Cyberspace has emerged as a bog global market where pornography is giant product. Today, Pornography is a billion and billion dollar business with an increasing demand of Child Pornographic Contents. While many of the western countries are leading as producers and source of such CSAM contents, India is no way lacking behind. 'Teen' has been the most popular search category worldwide and in India too. The increasing demand of CSAM contents and commercialization of Child Pornographic Material have made the situations harder to be dealt with.

Child Pornography is unquestionably a heinous crime because of its impact on the Children being portrayed in CSAM contents. That's why the issues of Adult Pornography and Child Pornography needs to be addressed separately as the focus of impact of both such acts is invariably distinct to each other. Child Pornography is embedded with a bundle of problems which inflict different kinds of physical, sexual and psychological abuse upon the children.

The National and International Agencies are putting their strong endeavours through various legal and technological means to combat CSAM being produced and made accessible, though their success is a big question mark yet. Lacs of websites are fully loaded with even Crores of such CSAM material in various forms which primarily, seem impractical to be tackled with. Additionally, the commercial pressure from the sides of the industry is another big hurdle in the way. In India, The Hon'ble Supreme Court has been contributing actively and almost all the initiatives taken by the Government in this field are the products of judicial strictness and seriousness on the problem. The Government has also shown its strong political will to ban such websites containing CSAM in any form by complying with all the orders and directions released by the Apex court.

The State of Assam has its distinct problems specifically relating to the exploitation of Child Rights. The peculiar geographical location of national and international importance, tea workers, poverty and under development with more probabilities of natural disasters may be some of the factors of rising problems of Child Trafficking, Child Prostitution, Sexual Abuse and Child Labour which can be the strong contributing factors to the Problem of Child Pornography in the state. The two latest cases having linkages with Assam, are the prime cause of concern as of now. The case involving trade of CSAM in and from the State of Assam needs

more attention. The security agencies in Assam have started taking new initiatives specially regarding infrastructural advancements to combat with the Cyber Crimes and will surely have a positive impact on the situations of Child Pornography in the State.

The Authors, on the basis of their study with limited scope, would like to suggest some important steps to be taken to improve the situation:

First of all, there is a strong need for strengthening the infrastructure with technologically advanced equipments to tackle CSAM in cyberspace. The solution lies in the progressive mindset to keep the agencies updated with the latest technological developments through special trainings and infrastructural upgradations and expert appointments.

Secondly, it is the high time to realize the importance of Ethical Hacking in tackling the problems like Child Pornography. Therefore, the authors are of the view that Ethical Hackers must be made a part of government security agencies.

Thirdly, the efforts must be targeted towards availability of actual data. There is a clear lack of data regarding Child Pornography, though the NCRB has started providing it since its report in 2014. The victims are needed to be motivated to report the crime in the institutionalized manner.

Fourthly, Academicians must be motivated to provide their valuable contributions with their systematic, genuine and unbiased research.

Fifthly, the authors feel that there is total lack of awareness regarding the criminality of the matter of Child Pornography. The legal awareness is needed to be spread among the common masses specifically as to the acts which come under the purview of Child Pornography and the legal provisions including punishment attached thereto.

Lastly and most importantly, there is a strong need of awareness and confidence building particularly in Assam, among the children who are the victims of any associated crimes such as Trafficking, Sexual Abuse, Kidnapping and related acts so that they can speak clearly as to whether they have been used to make clippings or any CSAM. NGOs and Social Organisation can provide very important contributions in this regards. The victims are needed to be motivated to report the crime in the institutionalized manner.

INVESTIGATING CHILD TRAFFICKING CASE STUDIES IN ASSAM AND MANIPUR VIS-A-VIS OPERATION BABYLIFT

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Abstract:

The Supreme Court of India in 2010 directed Manipur and Assam to stringently observe that no child below the age of 12 years is sent outside north-east for pursuing education. Interestingly, the direction was issued in response to several rescue operations for many minor children who were found to be ill-treated and tortured including sexual abuse to girls, in the unregistered children's homes in Karnataka and Tamil Nadu. The direction is a pertinent move to put a hold a child trafficking in the North-Eastern states, however, the recent data suggests otherwise. The National Crime Records, 2015, show Assam has emerged as the hub of trafficking in India. The data points out that Assam has the highest number of child trafficking accounting for 38% of the national figure. The paper in the first place, attempts to question the mounting number of child trafficking in Assam and Manipur especially after issuing of directions by the Supreme Court. While looking at the policy imperatives necessary to fill in the gaps, the paper endeavors to study the response by the government and the NGOs in providing rescue and rehabilitation operations to the victims of trafficking. In this regard, it would be intriguing to look at 2013 trafficking in Persons report by the US department of the state, which has pinpointed umpteen numbers of flaws in government efforts to reach out the victimized children and address the crime of child trafficking.

In an ample number of incidents, the traffickers lure the parents on account of education and job, some recent shocking stories have alleged how organizations such as Rashtriya Swayamsevak Sangh have conducted "Operation Beti Uthao or Operation BabyLift", and other operations like operation shuddhikaran - specifically in North eastern states by carrying out the ideological indoctrination to Hindutva in order to meet the teleological goal of Hindu rashtra by taking these minor children to Gujarat and Punjab. A key question over here is why do children and especially women become targets of trafficking especially in a contextual existence of Supreme court directions and strict state laws. Therefore, in my paper, I attempt to trace the two ends of spectrum of child trafficking - firstly, by comprehending trafficking incidents in Assam and Manipur by looking at different case studies from the two states and secondly, studying the operation babylift in my paper and exploring an emerging relationship between child trafficking, and ideological brainwashing in the contemporary realm of saffron wave.

Therefore, the aim of my paper is to scrutinize the interstices of modus operandi of child traffickers and the required political interventions in such cases. The other crucial objective would be to enquire how the state and its instruments in terms of legislative tools can restore a balance of constitutional values, and concentrate resources in meeting the goal 16 of the Sustainable development goals.

Keywords: Tea gardens, children, violence, Assam, child labour, trafficking

Introduction

"We wish to help the tribals and the poor girls of the North-East. These tribal girls have no access to education, appropriate healthcare and sometimes, even basic amenities", tells Rajni Thakral, north-India coordinator of Durga Vahini (women wing of Vishwa Hindu Parishad, a right-wing organisation working to consolidate Hindus in India and abroad). She further adds, "We have opened a hostel facility for them and if you will talk to them you will know how our organisation has trained and helped them".

The case of girl child trafficking in Assam and Manipur, or the entire north-east has seen a new wave in the contemporary saffron realm. The normatively accepted definition of 'trafficking' by the United Nations protocol illustrates trafficking as recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation¹. My paper places and compares the two kinds of trafficking-immoral and ideological, taking place in the north-east specifically in Assam and Manipur. The two narratives -immoral and ideological are not independent of each other, and are very much correlated to go hand in hand.

For the purpose of this paper, I would be comprehending the categories of immoral trafficking clubbed under - Immoral Traffic (prevention) Act, and Procurement of Minor girls. The paper will study the data records, research studies pertaining to the two sections. Further, the narrative of ideological trafficking will delve deeply into a dialectical connection between ideological internalization and its institutional apparatuses. Althusser (1970) as a proponent of critical theory, elaborates that the state is not as simplistic as defined by the Marxist theory of the state. The state comprises of complex overlap of institutions and thus, there is a distinction between repressive state apparatus and ideological state apparatus. The former is a unified public domain regulated by violence, while the latter apparatus functions by ideology. In this sense, the ideological state apparatus consists of the family, the legal, the political branches of the state. Althusser firmly argued that no class can monopolized the power of the state apparatus without being hegemonic in the ideological apparatuses².

My paper will ponder over the category of ideological state apparatus to draw the role of saffron ideologue in penetrating legal, familial and political nuances of the state.

¹ Bagchi Shatabdi & Ambalika Sinha, Human Trafficking in India: Theoretical Perspectives with special reference to the Human Trafficking scenarios in The North Eastern Part of India, 6 IJRESS 109, 110 (2016).

² Louis Althusser, Ideology and Ideological Apparatuses, Marxists Internet Archive (1970), <https://www.marxists.org/reference/archive/althusser/1970/ideology.htm>.

The Immoral Traffic Prevention Act, 1956 was a result of pursuance of international convention concluded at New York for the prevention of immoral traffic. The act codifies down rules and regulations protecting women and children from forceful flesh trade. Firstly, the act regularizes prostitution and punishes the trafficking of women and children. Secondly, the act clearly establishes that trafficking of children for flesh trade or other means is a criminal offence. In order to enact the law further, the state in its discretionary power may establish protective homes and corrective institutions. My paper will review the implementation of this act in Assam and Manipur with help of rising crime rate, and evaluative follow ups by the governments.

The second law, my paper focuses at is Indian Penal code 366A- Procurement of minor girls. The act codifies that "any inducement of minor girl under the age of 18 years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine". The paper will scrutinize the enactment of the law and devise measures for improvising the law.

It is imperative to lay this understanding at the outset that implementation of the two laws, the rising crime rate, the conviction and acquittal rate and the operation beti uthao functional at different north east states have 'state' as a central role player. While legal instruments might be considered as a means to combating the trafficking, it is equally crucial to question the violation of these codes by the political players themselves. Moreover, while one investigates why's and how's of a critical issues such as trafficking, it is essential to know that legal devices might not be sufficient in themselves, and would require one to address several other determinants- class, caste, and a whole range of intersectional factors. Such cleavages and intersectionalities are not static in their immediate selves, and would need empowerment from political, legal, educational, familial, societal fronts.

Literature Review

The National Human Rights commission report titled "Trafficking in women and children in India 2002-03" underlines many key issues pertaining to the psychological, material, and legal picture of trafficking in India. Apart from a central understanding of identifying trafficking as a violation of human rights, the report has poignantly pointed out the nuances of clandestine nature of buying and selling of children, and how the trajectory of trafficking itself varies from state to state-ranging from inter state to intrastate trade. While the report clearly states that the issue of gender and child rights becomes a drop in the ocean comprising of human rights, however, my paper will attempt to portray gendered child rights from a peripheral perspective rather than following a mainstream outlook. The idea of

my paper is not sheerly to highlight the rights-based approach, nonetheless to argue for a comprehensive understanding of interaction between patriarchy and consciousness for child rights. Further, other interstices which are often considered crucial in analyzing trafficking as a crime is the interaction between patriarchy, gender, caste, class and region. Such diverse factors would be scrutinized in the broader background of rights-based approach.

The report brings forth a working definition of trafficking adopted and stated in the UN protocol "to prevent, suppress, and punish trafficking in persons, especially women and children". Trafficking comprises of recruitment, transportation, transfer, harboring or receipt of persons by threat or use of force or other forms of coercion, of abduction of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs³. Essentially, the report comprehends 'consent' as irrelevant in the case of children. My paper will concede to the concept of 'consent' as taken by the report and will develop from this standpoint that consent in case of trafficking is an imposed category- often concurred as a bait, an intimidation or as a forced instance.

As this paper would be taking in account the diverse determinants interacting with one another, the concept of 'vulnerability' will also be interpreted as a state of constant deprivation in a particular socio-economic context. In this sense, vulnerability is a helpless situation where there is no real agency and choice but to accept and submit to the abuse for the person victimized by it⁴.

The legal grounding for the purpose of this paper is first and foremost the fundamental rights. The Indian constitution prohibits all kinds of trafficking under Article 23. The suppression of the Immoral Traffic Act, 1956 (amended to the Immoral traffic prevention act-ITPA) was in response to the ratification of the international convention on suppression of immoral of traffic and exploitation of prostitutes of others in 1950 by India. However, one of the most important misgivings of the law ITPA criminalizes transactional aspects of voluntary sex work by punishing the ones who voluntarily solicit sex work and thus, doesn't differentiate between trafficked instances and voluntary sex work. My paper thus, aims to address this debate by bringing in effective legislative measures separating the two.

An enthralling aspect about this report is beginning from a ground when there is no universally agreed upon definition for trafficking. The United Nations has recognized that historical characteristics of trafficking are obscure, ill-defined

³ 1 PM NAIR, TRAFFICKING IN WOMEN AND CHILDREN IN INDIA 2002-03 3 (2004).

⁴ *Id.*

and non responsive to contemporary scenario where the nature and extent of the abuses are inherent in and incidental to trafficking⁵. My paper will take up this aspect of coming up with a definition of trafficking looking at it from a more gendered framework than remaining within the broader caveat of human rights. The causes of trafficking are many varying from personal circumstances, vulnerable contexts to structural factors. However, my paper would pay special heed to the structural factors which have penetrated deeply into the legislative and executive realities of the state. The structural determinants influencing and determining these circumstances are industrialization, globalization, economic crises, decline, disruption or underdevelopment; economic policies like privatization, liberalization, promotion of sex tourism, withdrawal of subsidies, the political factors like conflicts, disruption and instability, immigration policies, human rights violations and the gaps between government rhetoric and practice and a culture of consumerism, materialism and commodification of individuals and commercialization of sex distorts family needs and individual desires⁶. Further, the paper would examine the role of feminization of poverty migration in increasing the factor of vulnerability as pointed out by Sanghera⁷. The perpetuation of trafficking triangle is the vicious circle between demand, supply and impunity with which trafficking occurs. Alison Phinney argues that sex trafficking is due to a culture that is indifferent to the rights of women and children, stimulated by a demand for bodies in sex industry. These traffickers are able to exploit human misfortune with near impunity.

The paper will further analyse case studies put forth in the report on commercial sexual exploitation driven by several determinants ranging from financial dependence, nexus between politicians, pimps and brothel keepers and an imperative of caste underplaying these factors. Usually women and girls belonging to the most marginalized sections of society are targeted for sex work and prostitution by pimps. Nearly 50 percent from Scheduled Castes and Scheduled Tribes and 12 to 27 percent from Other backward classes⁸. Another pertinent input would be to take a look at intrastate and interstate trafficking comprehending what drives that difference and also, bringing forth the source, transit and destination points for commercial sexual exploitation.

Shakti Vahini's, report titled as "Trafficking in India report 2004" has elaborately described the patterns of commercial sexual exploitation in Assam and Manipur. The report has elucidated transit points of girls from Assam, while many of them are sold for sexual businesses, many others are coerced into marriages and bonded labour. Bihar has been a conspicuous transit point for girls being

⁵ NAIR, *supra* note 3, at 7.

⁶ *Id.* at 9.

⁷ Jyoti Sanghera, Trafficking of women and children in South Asia: Taking stock and moving ahead a broad assessment of anti-trafficking initiatives in Nepal, Bangladesh and India, UNICEF, Nov 21, 1999, at 4.

⁸ *Id.*

trafficked from West Bengal, Nepal, Bangladesh, Orissa and Assam⁹. Further, the report states that maximum sex trade in North-East begins in the state of Assam, Nagaland and to some extent Sikkim. However, in states like Manipur the prevalence of child soldiers due to insurgency is a harsh reality. These children are under 15 years of age. It would be intriguing to understand how issues such as trafficking, bonded labour are contingent on political realities of a state. Thus, my paper would scrutinize the dialectical relationship between political contexts and child rights. Besides, the social political realities, there are other determinants like border sharing state, education, per capita income impacting the context of trafficking and its frequency in the north-eastern states.

The politics of trafficking is inevitably connected with lucrative businesses of drug and crime revenue. While Indian Labour organisation claims that largest number of women trafficked in Asia are from within or from the region, Manuel Castells in his book, "The Rise of Network Society" propounds a systematic theory of information technology and how the advent of globalization has covered both north-east India in the rubric of information society¹⁰. Quite contrary to the interconnectedness to the phenomenon of globalization has blessed this world with, trafficking of women in Manipur exposes the failure of capital formation, production based investment and human resource development. In other words, globalization has made the north eastern ground fertile for crimes like trafficking.

On one hand, case studies of immoral trafficking driven by several political, social and economic influencers, while on the other, there is an emerging narrative of ideological trafficking to widespread the saffron agenda. While one may often comprehend ideological trafficking not as 'trafficking' as per say but to paraphrase it more specifically as, 'indoctrination, and internalization'. The phenomenon of internalization for political ideologies is not solely aimed at keeping the vote bank politics in mind rather a larger notion of 'mass psychology' is at play here. Man as a social being cannot in the long run exist without a tie to the community, so that the individual will never find the real justification for his existence and his own spiritual and moral autonomy, anywhere except in an extra-mundane principle capable of relativizing the overpowering influence of external factors. In this sense, the individual at one time begins to look at the state as taking the place of God and when religious function cannot be dislocated and falsified it gives birth to fanaticism. Therefore, free opinion is stifled and moral decision is ruthlessly suppressed to think otherwise. The state is exalted to a creed, the leader or a boss becoming demigod, standing above all the criticisms. This nature of Indian state is manifested in incidents when young girls are brought to saffron camps as a mission to further the creed Hindutva. The mass-mindedness created, thus, encourages oppresses the

⁹ Shakti Vahini, TRAFFICKING IN INDIA REPORT-2004 20 (2006).

¹⁰ Vibhuti Patel, Women's Struggles and Women's Movement in India, in UNDERSTANDING WOMEN'S ISSUES- a FEMINIST STANDPOINT 99 (Murtaza Shahida ed., Lap Lambert 2012).

voice of the other. Mass-mindedness as a phenomena, fabricates lies such that as Hannah Arendt propounds that lies are often wanted since the liar has the great advantage of knowing beforehand what the audience wishes or expects to hear making such lies plausible, and appealing to reason, than reality.

The paper aims to understand Indian politics from the perspective of these fabrication of lies and business of trafficking, illegal putting of girls into the camps as the telos of establishing Hindu rashtra. For this, Neha Dixit's, 'Operation Beti-uthao or Operation Babylift' would be explored at length. The operation beti uthao as a silent manoeuvre against a loud campaign run by PM Modi 'beti bachao, beti padho', is a crucial juncture to question the nature of state-led policies in contemporary Indian politics. The operation beti uthao vividly describes, "The Bodo and adivasi girls, taken away from their homes, have now embraced patriarchal ideas of honour, sati and jauhar instead of turning to their own brave tribal women warriors like Tengfakhri, who fought criminals in the British era instead of committing suicide like the Rani of Chhota Kashi. The 'bravery' being instilled in these girls is limited to the Sangh's Hindu state-building efforts as wives, mothers, recruiters and sometimes propagandists. They return home indoctrinated and embittered, their teenage rebellion channelized into radical religiosity." Interestingly, these right wing organisations such as RSS and VHP often postulate a theory of poverty and lack of basic amenities for putting north-eastern girls into these saffron camps. However, an imperative query here if at all the lack of basic amenities becomes a legitimate reason to indoctrinate these young girls into the camps? Do these camps actually serve the purpose of education without any twisted versions of history or polity? My paper will attempt to address these tricky queries.

The "India's Human trafficking law report book", lists out various schemes and policies initiated by the Indian government to prevent and rescue victims of commercial sexual exploitation. The Ujjawala scheme is a comprehensive effort for prevention of trafficking and rescue, rehabilitation and reintegration of victims of trafficking for commercial sexual exploitation. The scheme running under the Ministry for Women and Child Development attempts to "provide rehabilitation services both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including 85 counseling, legal aid and guidance and vocational training¹¹. The paper will review the implementation of this scheme by scrutinizing the budgetary allocations done for the policy and number of victims rescued and rehabilitated. Another pertinent investigation would be to evaluate the implementation of Juvenile Justice Act, 2000. The Act establishes procedures for the recovery and social integration of 'minor children' like creation of shelter homes and the provision of foster-care services. The paper will endeavour to

¹¹ Kimberly Rhotan, India's Human Trafficking Laws and Policies and the UN Trafficking Protocol: Achieving Clarity 17 Policy Brief, February, Centre for Health Law, Ethics & Technology, Jindal Global Law School (2015).

establish how multiple fault lines in implementation of laws and policies are essential to reform the system. Thus, these fault lines would lay the groundwork for initiating policy level inputs such as setting up of independent commissions and bodies, fast track resolution of crimes committed, stringently following the guidelines set up by UNICEF and United Nations.

Research Methodology

The paper comprises primarily of secondary data from various research studies and reports. The paper will however, not be restricted to qualitative material, it will read into the nuances of quantitative data - to comprehend a holistic picture of trafficking. Therefore, the paper is a mixed methodology taking both contextual and data oriented picture into account. The paper will study and place different case studies from Assam and Manipur in a comparative perspective to assess the wider phenomenon of trafficking and its relation with the respective socio and political context. To concretize the investigation, an ample amount of field studies would be contrasted between the narratives of both immoral trafficking and ideological trafficking.

Analysis

Before delving into the nuances of causal relationships between different variants of trafficking, I would define trafficking as a multidimensional concept. Trafficking as a multidimensional form of exploitation, wherein each dimension has its own legal and conceptual framework¹². There are multiple types of trafficking, each with different kind of implications, yet part of 'an interrelated web of varying contexts', thus, any expectation of consistency of definitions across varying contexts will be unrealistic. The recognition of multifaceted nature of trafficking is necessary to take note of multilayered contexts for which would make trafficking an intricate crime to handle. For instance, some suggested forms are defined on the basis of differences at the place of origin; others focus on difference arising at the destinations; some make the methods adopted by traffickers as the basis of the forms; others use the criteria of purpose¹³. Thus, there is no uniform pattern to the process of trafficking. However, salience of certain determinants remains common across regions and continents. The prevalence of these determinants has not left North-east India untouched. Jyoti Sanghera, in her report, "Trafficking of women and children in South Asia: taking stock and moving ahead", underlines an intensification of the following trends contributing to the growing magnitude of trafficking - the feminization of poverty, the breakdown of traditional social and economic structures and the atomization of household members into units of labour, increasing insecurity of food and livelihood, growth in the feminization of migration due to vast majority living under marginalization, increasing diversification and segmentation of

¹² NAIR, *supra* note 3, at 34.

¹³ *Id.* at 8.

market on account of globalization thus, increasing the gap between the haves and have nots, increasing demand for vulnerable and cheap labour especially from women and children. The pervasiveness of structural factors penetrating into the societal conditioning includes industrialization and globalization and an emerging culture of consumerism wherein women and girls are increasingly hired as service providers, putting them at risk¹⁴. The primary query here is what makes women and girl child in specific vulnerable to the insecurities of market and crimes like trafficking. Sanghera points out that girl child often fall prey for the designs of unscrupulous agents, offering 'choices' and assistance with travel, particularly across borders, for jobs¹⁵. In many instances, children and especially girls are pushed into trafficking as most of the times the ubiquitous notion is that girls are chattels of their father or guardian. Quite shockingly, these practices of early marriage, coercion into trafficking, are normalized as patriarchal norms in the social set up. Eventually, this leads to internalization that girls and women should bear injustice silently furthering the vulnerability factor. Sanghera's study validates this even further, vehemently arguing, "Trafficking of men in South Asia is no way approximates the dimensions that trafficking in women and children has acquired in the region. As such then, men are smuggled or illegally transported whereas women and children are smuggled"¹⁶.

The reason why my paper in particular looks at the phenomenon of trafficking from a gendered perspective is because historical presence of laws, policies, customs and practices that justify and promote the discriminatory treatment of women and girls and prevent the application of the entire range of human rights and constitutional laws to women and girls. This becomes clear if one takes a look at the records of National crime bureau the procurement of minor girls in Assam (table-1) has went from 75 in 2010 to 1303 in 2015. While this number has fluctuated in the state of Manipur (table-2), jumping to 17 and 22 in 2012 and 2013 respectively, while remained nil for other years. However, the graph of Assam is reiteration of research reports published by NGOs like Shakti Vahini that trafficking in the guise of migration for coerced marriage is quite prevalent¹⁷. "Traffickers can also create migration situation by capitalizing on the lack of choice of the poor. This very powerlessness of the migrants creates a condition in which they can easily be duped, coerced and exploited furthering their susceptibility to continuance of exploitation"¹⁸. The National Human rights commission report in its study on Human trafficking has depicted the source, transit and destination of both the victims of commercial sexual exploitation and traces the movements of the traffickers as well. The data collected from interviews of both women and

¹⁴ Sanghera, *supra* note 7, at 4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 8.

¹⁷ Renu Sharma, Trafficking in women and children in India: A situational analysis in Maharashtra, 2(2) IJCS 85-87 (2008).

¹⁸ *Id.* at 88.

children interviews indicates that 88.4 percent in--Assam and Meghalaya had been subjected to intra state trafficking. The trafficking map for commercial sexual exploitation shows Bihar, New Delhi, Gujarat, Maharashtra, and West Bengal as major destination points. Further, in flow trafficking to Assam shows the areas such as Kamrup, Guwahati, Nalbari, Barpeta, Cachar and Kokrajhar as prime targets. However, interestingly, out flow chart of trafficking shows majorly Assam and Meghalaya besides Delhi, Maharashtra and West Bengal. Thus, most of the trafficking in Assam occurs within the state. The transit point has expressed in the charts is Guwahati for Assam and Shillong for Meghalaya.

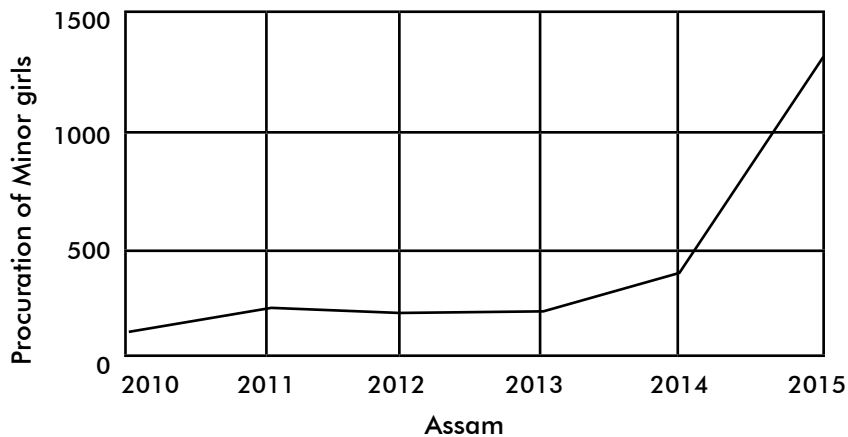


Table -1 (Procurement of minor girls in Assam show a steep rise from 2010-15)

Procurement of Minor girls vs. Manipur

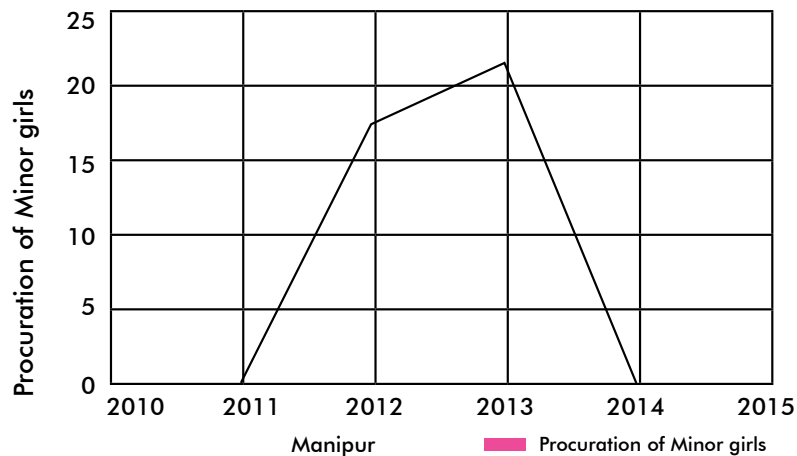


Table- 2 (Procurement of minor girls in Manipur show an increase only in 2012 and 13)

The trafficking networks in Assam have got established so much in the recent times that women and girls are trafficked to the brothels of Mumbai, Nagpur, Pune, Siliguri and other red light areas in Bihar and West Bengal. The trafficking networks working in Assam have now got well organised that there have been cases where the girls from state of Jharkhand were trafficked by the persons belonging to Assam¹⁹. The border sharing with Bangladesh becomes another factor proning the state to the menace of trafficking. Thus, Bangladeshi touts build up powerful bases and intimidate young girls in the border districts of India in West Bengal and Assam. This makes the Bangladeshi population in Assam even more vulnerable to trafficking. However, Manipur remains on a slightly different tangent owing to drug trafficking. Due to the changes in patterns of economy more and more tribal women are taking up commercial sex and daily wagers where they are increasingly becoming vulnerable to abuse and exploitation²⁰.

In recent years, hundreds of children have been trafficked from Manipur on false promises of providing good food, quality education or lucrative job²¹. The major places these children are trafficked to are Goa, Tamil Nadu, Delhi and Maharashtra.

The report also indicates that out of the victims rescued from commercial sexual exploitation around solely one of them belonged to the under 18 age group. Thus, if one takes a look at the past five years data of NCRB it shows around 3 girls were sold for prostitution in 2010 in Assam and the number has been zero since then. Contrary to these datasets, around 15 victims from Assam and Meghalaya were under 18 age group found in brothels across states. Interestingly, almost all of them were illiterate and hardly any number had received primary education. The variant of vulnerability increases in an illiterate environment even further. Therefore, around 63.1 percent admitted that selection of source area is dependent on the vulnerability of women and girls located there²². While a fourth of traffickers admitted that poverty and unemployment remained important factors in determining sources, besides a 48 percent admitted that their source was a rural location. Thus, traffickers often use yardsticks such as social deprivation, broken homes, lack of awareness and other factors which place them in a vulnerable situation²³.

The dialectics between vulnerability, social deprivation, are not the sole causal factors for trafficking in North-Eastern India. A very important tangent is that of large disparity in sex ratios, for instance, in Haryana

¹⁹ *supra* note 9, at 87.

²⁰ *Id.* at 13.

²¹ RAJU NARZARY, IMPACT OF CONFLICT ON CHILDREN IN ASSAM AND MANIPUR STATES OF INDIA 23 (2014).

²² NAIR, *supra* note 3, at 86.

²³ *Id.* at 148.

led to the trafficking of brides from Bihar, Assam, and West Bengal²⁴. Furthermore, many girls as young as 11 are sold into marriage for petty sum of few hundred rupees to 45-year-old men who seek her to bear a son²⁵.

Apart from that, NHRC report has also cited many instances when traffickers themselves admitted trafficking women on the promise of marriage luring their family members as many of these girls belonged to economically poor sections.

The contemporary North-east India have had a history of armed conflict which can neither be detached nor twisted. The political scenarios were demanding to the extent that demands for secession were prevalent in the 1970s. The impact of armed conflict on children is tremendous, not just insecurity to their lives but arrest, detention, torture, rape, disappearances and extrajudicial executions. Many times, children are forced to join the armed groups to help their broken families and patchy financial conditions. However, the internal displacement in the region has led to missing children in large numbers. The Assam State Commission for Protection of Child Rights (ASCPCR) reports that 4,234 children out of whom 2,819 are girls have been reported to be missing since 2011 and are still untraced²⁶. According to report on Human trafficking report-2004 by Shakti Vahini, during insurgency around 10 percent soldiers were girls numbering around 3000 with the lowest recorded at the age at 12 years²⁷. These children belonged to militant groups like Bodoland liberation, Tiger force, Bodo security force. In a similar vein, at least 50 percent were child soldiers, at lowest age recorded to be 11 years.

Reportedly, in such conditions many children were put behind bars without even a proper application of Juvenile justice act. The widespread nature of ethnic conflicts in Assam and Manipur forced many children to join the insurgent groups in an effort to represent their communities. Thus, either children were displaced due to which many young girls went missing, or they ended up being a part of the insurgent groups, therefore many times police would register the case of mission girls. This created a problem in evaluating the actual number of victims of trafficking. Thus, the narrative of immoral trafficking and procurement of girls remains a complex scenario.

Nonetheless, the ideological narrative of trafficking is even more impenetrable as there would be no data records to comprehend the extent of its occurrence. In 2016, Neha Dixit, a freelancer and reporter based in New Delhi, did an investigative story on how thirty one tribal girls from Assam were trafficked to Punjab and Haryana in an effort to hinduise them. Neha has sharply pointed out that the 31 girls were made to board a train on the promised of education

²⁴ Prakash, Nishith, & Krishna Chaitanya Vadlamannati, Girls for sale? Child sex ratio and girls trafficking in India 8, IZA Working Paper, No. 8293 (2014).

²⁵ *supra* note 9, at 89.

²⁶ *supra* note 24, at 7.

²⁷ *supra* note 9, at 12.

in Punjab and Gujarat. Interestingly, these girls belonged to the districts pointed out by the paper as vulnerable source places for the traffickers. The five border districts of Assam, Kokrajhar, Goalpara, Dhubri, Chirang and Bongaigaon. This investigative report is not sheerly an evidence of how trafficking takes place in the name of education, job, but also poignantly speak volumes about the changing nature of trafficking when it is not being carried out in the name of bonded labour, prostitution, marriage, however for the broader notion of preserving the civilization of Hindutva. Startlingly, the Sangh Parivar flouted all kinds of directions and orders put forth by the Child rights commission of the state to bring back the young girls. As Neha writes, "the Assam State Commission for the Protection of Child Rights (ASCPCR) wrote a letter (ASCPCR 37/2015/1) to the ADGP, CID, Assam Police, and marked it to the National Commission for Protection of Child Rights, calling this incident "against the provision of Juvenile Justice Act 2000" and concluded that it amounts to "child trafficking". The commission requested the police "to initiate a proper inquiry into the matter and take all necessary steps to bring back all 31 children to Assam for their restoration". The police was asked to submit an Action Taken Report to the ASCPCR within five days of receipt of the letter. No action was taken; no report was filed; no cognizance was taken by the National Commission for Protection of Child Rights, which is monitored by the BJP-ruled Centre"²⁸. Two very enthralling nuances of the incident are- firstly, the violation of Supreme court guidelines that no child below 12 years of age is sent out for pursuing education, secondly, violation of Juvenile justice act by not producing the girls before child welfare commissions or obtaining NOC from them before taking the girls to Punjab and Gujarat. Moreover, Sewa Bharati and Rashtriya Sevika Samiti sought to circumvent the situation by producing the affidavits signed by children's parents. The semantics of the affidavit intriguingly said, "I am a cultivator and a riot victim, my home is totally damaged in the riot which occurred in January 2014, I still stay in relief camp, I don't have a source of income, I couldn't afford the school fees for my daughter, and so, for better education I am sending my daughter to Gujarat to study by own will"²⁹. However, these affidavits were signed after the girls were trafficked clearly as a manoeuvre to manipulate the law.

The investigative report thus cited, puts forth an ample amount of evidence how tribal groups are bargained into believing that there is no difference between their religion and Hinduism. Neha in her conversation with a child rights activist repatriating children from border areas over 20 years, says, "In an attempt to get both under the Hindu fold, the Sangh Parivar outfits have come up with this convenient divide: Bodos are shaivites, adivasis are vaishnavites. This keeps them together as Hindus and also lets them marinate in their old ethnic conflict"³⁰. Narratives from both the activists from RSS who mainly undertook the trafficking and transportation of the young girls, reflect

²⁸ Neha Dixit, Operation Betiuthao, OUTLOOK, August 8 2016, at 2.

²⁹ *Id.* at 3.

³⁰ *Id.* at 2.

a traumatic experience after a riot like situation, thereafter, rescued by the RSS activists. Such post traumatic experiences turned an ideology into a saviour and a committed believer of Hindutva ideology. The political strategy becomes quite sly in nature - first by establishing welfare camps, increasing mass base identifying potential trainees, distributing lockets of Ram and Hanuman and thus, paving a way for Hindu literature into the rural spaces. As Neha Dixit argues, "The Sangh connection and Hindutva indoctrination is less apparent to a rural person"³¹.

The program of education and basic amenities is nothing but an indoctrination of Hindutva ideology to girls. The lingua franca among the right wing activists is that girls have forgotten sanskars, they are not acquainted about Indian culture and thus, this training is an effort to inculcate values of a Hindu civilization so that wherever they go they can raise a civilized family. The potential trainees are internalized to believe that if Bodos are converted into Hindus, Muslims and Christians can take over the land destroying their culture and samaj. The microphysics of power operate in the training camps such that ideas of honour of bharat mata, women empowerment vis a vis the other that is Muslims or Christians, the engineered accounts of Rani Lakshmi bai, Rukmini the wife of Krishna belonged to Arunachal Pradesh become internalized subjectivities. Thus, Hannah Arendt in her essay Truth and Politics argues, "The historian knows how vulnerable is the whole texture of facts in which we spend our daily life; it is always in danger of being perforated by single lies or torn to shreds by the organised lying of groups, nations, or classes, or denied and distorted, often carefully covered up by reams of falsehoods or simply allowed to fall into oblivion.... Lies are often much more plausible, more appealing to reason, than reality, since the liar has the great advantage of knowing beforehand what the audience wishes or expects to hear"³².

Policy Imperatives to Root Out The Menace of Trafficking

Trafficking as a crime against human rights, a manifestation of gender-based violence requires a stringent legal and societal framework both within and without the system. The already in place legislations like the juvenile justice (care and protection of children) act 2000, the immoral traffic prevention act 1956, the child marriage restraint act 1929, the bonded labour system (abolition) act 1976, the child labour (protection and regulation) act 1986 have overtime evolved in the form and structure. However, both ITPA and Juvenile justice act have revamped in consonance with the international instruments of the time. The Juvenile justice act is a mechanism to help a vulnerable child providing them facilities of care, protection, rescue and rehabilitation. The ITPA provides for setting up of special courts by state governments, as well as by the government of India. The NHRC report shows that although there is an overall improvement in law enforcement agencies, some of the immediate concerns are

³¹ *Id.* at 4.

³² *Id.* at 6.

lack of priority in dealing with the problem of trafficking, gender discrimination in law-enforcement with a high percentage of women getting arrested and convicted vis a vis men who committed heinous crimes and escaped the loop of law, the gap between reported crimes and unreported ones, lack of partnership between police and civil society and other government departments. Reviewing the role of the courts, the NHRC report states that there is a need of a 'socially sensitized judge'. Justice Iyer puts forth, "The police officer cannot be the moral guardian of the Indian citizen, that Judges trying this class of cases, unless specially trained or put through courses, prove to be judicial obstacles rather than social justice vehicles. The masculine lethargy at every stage is writ large"³³. He further opined for a radical reform in the existing law, while stating, "khaki is ill-equipped and robes too unrealistic". The sentencing policy by the courts has also depicted inconsistency and favouritism in certain cases. It is important that during the court proceedings the ambience is sensitive and comfortable for the victim, especially while dealing with child-victims the environment must be child-friendly. The report has also suggested a need for a bench manual to guide the trial courts with regards to legal aid services, gender sensitive and child friendly court procedures, sentencing guidelines, to name a few.

The Human Trafficking Report by Shakti Vahini indicates that in Assam although advisory committees were formed but it has not been meeting regularly. According to this report, there were only 3 Juvenile Justice Boards in the state, 16 Child Welfare Committees have been formed, two homes for women, three observation homes, six children homes and one special home. The report found that there were no separate homes for rescued victims as provisioned in ITPA. Further, there were no studies done to identify destination, transit points, causes and magnitude of the problem. There is no specific scheme for Women and Child Victims to integrate them with the mainstream schemes of employment, assistance and development and no specific family education counseling and short stay homes for victims of trafficking and commercial sexual exploitation³⁴. The report indicates that there were no provisions for educating the rescued children.

The condition of Manipur, when it comes to the state response is equally disdainful. The state Advisory Committee, Coordination committee, Anti trafficking cells, Task force, Juvenile Boards, Juvenile Committees, plan of action had not been implemented by the state³⁵. Furthermore, there is only one juvenile home run by the state government.

Conclusion and Recommendations

The Ministry of Women and Child development has undertaken three kinds of pilot projects to tackle the crime of trafficking- to combat trafficking of women and children for commercial sexual exploitation under the sanction of tradition,

³³ NAIR, *supra* note 3, at 292.

³⁴ *supra* note 9, at 89.

³⁵ *Id.* at 90.

in source area and in destination areas. Similarly, WCD has also launched comprehensive Ujjawala scheme to combat trafficking, however it is necessary to address that merely launching of schemes are not enough to change the perceptive realities existing in the social set up. Some of the key recommendations emanating from research in this paper include prohibiting discrimination against women in education, health care and employment, establishing a cooperative partnership between the law enforcement agencies and NGOs- as civil society has expanded and evolved over the years, the responsibility to implement, sensitize officials is also shifting to the development sector. Thus, it is crucial for NGOs to perform a fourfold activities which are -- establish a relationship between police and common people, identification of traffickers and their network, rehabilitation of trafficked victims and arranging programs for psychosocial adjustment of them³⁶. A model that can be cited in this respect is Impulse model. The model has been initiated by the Impulse network - NGO based in Meghalaya. The stakeholders have implemented the five P's: Prevention, Protection, Policing, Press and Persecution and 5 R's: Reporting, Rescue, Rehabilitation, Repatriation and Reintegration. The model is an effective move to bridge the gap between different stakeholders such that there is a data base for proper reporting, providing legal services and ensures an adequate implementation of women and children rights.

Different reports and research articles show that prevention of trafficking has not been given adequate attention, as much as curing the disease has. Therefore, an immediate need to work to eradicate the conditions of vulnerability ranging from poverty, inequality, hunger, social deprivation, and broken homes. Also, the focus in punishing and addressing the issues of commercial sexual exploitation is often concentrated on the areas of demand and visible site of exploitation almost negating the unheard stories of exploitation characterizing various steps and processes of trafficking.

As an international guideline, it is mandatory to make the United Nations protocol to prevent, suppress, punish trafficking in persons especially women and children adopted in November 2000 is a part of the United Nations Convention against organised crime and provides the first internationally recognized definition of trafficking. This definition is essential guiding principle to comprehend the interstices of trafficking.

The Justice Verma committee has precisely observed in their report that often the police and the CBI have merely played the role of issuing advisories and circulars rather than eradicating trafficking completely. The report also notes that many times complaints by women and children are not promptly registered by the police. There is a prevalent institutional bias when it comes to gendered reporting and registering of a crime. Thus, being a part of international conventions is not enough, there should be some assessment mechanism to overview the implementation of agreements and treaties signed abroad. Another key point in the report is

³⁶ Runumi Devi, Awareness of Rural Parents on Women Trafficking—A Study, 2 IJHSS 192, 197 (2015).

inadequacy of judicial personnel which often leads to pendency of cases, thus, there is an urgent need for judicial system to give away its archaic methods.

What one observes in operation betiuthao or operation babylift, is not the negligence of Child welfare committees or the child rights commission but an involvement of BJP government due to which an independent inquiry could not be initiated. This is very significant to add that political influencing of any trafficking cases would worsen the situation even further. This would strengthen the ideological apparatuses adding to the gender bias in institutions. Moreover, what is happening at these saffron camps is not just a crime, but a deprivation of the right to study history impartially and neutrally. The Hindutva model of history or development obscures other versions, and impose its own narrative by picking up young girls and internalizing them. In my conversation with Neha Dixit over the current situation, she says, "Although six girls have returned back to their homes after my report was published, however, no enquiry was conducted rather a case was filed against me. Despite of repeated notifications and circulars issued to the Sewa Bharati, there was no stringent action taken by the central government. It is important to mention here that what RSS did is illegal and a criminal act". The operation beti uthao stands in violation to the Supreme Court guideline, the article 9 of United Nations Convention on the Rights of the Child, article 30 of the United Nations Convention on the Rights of the Child, the Juvenile Justice Act 2000 and as amended in 2006.

What one might conclude taking an in depth study of the paper is that the case of North East India is no different from rest of India. However, the presence of borders, varying socio political context and the levels of education, employment does make a way for the crime. It would be noteworthy to ask ourselves if there was proper education, awareness and employment in Assam, would an operation beti uthao happen? It is probable that dealing with ideological indoctrination upon oneself and others is an intricate task, nevertheless, awareness and education gives one the freedom to ask questions, to scrutinize and exhume the factual picture. The intent of this paper is not to leave everything on governments, or government's capability in providing education, employment but to recognize our responsibility as citizens in this democracy. The contemporary era is moving towards a phase wherein shrugging away the duties and giving away to the temptation of saffron realm would be a cakewalk. The approach to resist, and embark on the journey of abiding by the constitutional values would be a narrow lane to charter. Nevertheless, as Arendt would have argued in these fragile times of 'organizing lies', it is indispensable to believe in the evidence of rational truth. Rational truth enlightens human understanding such that destroying it might be possible but it can reproduce and rediscover itself again when the political conditions permit. While one may ask how would one differentiate between opinions, factual truth and the rational truth, Arendt claims truth has a 'coercive' and almost 'despotic' power. Therefore to reject truth is to destroy, "the ground on which we stand and the sky that stretches above us;" it is to destroy our world as humans³⁷.

³⁷ Heather Roff, Trump and Truth: Or What Arendt Can Teach Us about Truth and Politics, Duck of Minerva 4, February 14, 2017.

LEGAL PLURALISM AND THE NOTION OF RIGHTS OF CHILD AMONG THE TRIBAL COMMUNITIES OF THE NORTH EAST INDIA: A CRITICAL ANALYSIS

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Abstract:

Children are the future wealth of the nation. The onus of bringing up children to become confident, self-reliant and responsible citizen is on the parents, guardians, community and the state. In an ideal state where resources are abundant it is most likely that child grows up in a healthy environment of family, has access to good food clothing, drinking water, education and home. However, in situation where there is manmade impoverishment, insurgency, corruption and other social-economic and political challenges, the concept of rights of child remains a fancy word. Most of the North East states are either backward or declared disturbed area. Owing to ongoing law and order problems in this region for the last six decades the vulnerability of the children manifold in comparison with rest of the children in mainstream India. Chances of children being illegally taken for child soldier, human trafficking, and exploitation- mentally and physically is further compounded due to underdevelopment of legal systems in the region. Also, the peculiarity of the customs and the traditions of the different tribes inhabiting the region mandate the need for the evolution of a peculiar narrative of child rights palatable to the specific need of the tribal community depending on the values, understanding and practice of each tribe. Keeping in view this premise it is imperative and necessary that a uniform notion of right of child be infused in the social consciousness of the majority of the tribal population of the region. The first step is by accepting the plurality of the cultures, traditions and customs and customary laws of the different tribal communities residing in the North East of India. Most of the tribal customary laws are usually patriarchal in its approach and narrative, as such championing the idea of rights of child might among some tribes be phenomenal, while for other it may be gender biased and further still, it may be disdainful for others. Thus, the plurality and diversity of the notion had to be tested and interpreted by applying the principles of legal pluralism within the ambit of Chapter III and Chapter IV of the Constitution of India as well is consonance with universally accepted norms of rights of child.

Key words: *Insurgency, legal pluralism, child rights, customary laws*

Introduction

India is in the 71st years since it achieved independence. The journey of the India as nation has been mired with challenges from within the nations' inherent challenges which are either social, economic or politic. To the world India is the best of example of unity in diversity, a thriving sovereign, socialist, secular democratic republic which ensure to all its citizen social, economic and political

justice¹. The idea and concept of justice embedded in the constitution has wide and inclusive interpretation for those who are citizens of India. The tribal people of North East of India, however, have different notions and narratives of the idea of India as they have been engaged with the Indian government at a very different level of issues and challenges pertaining to arms conflicts. The ongoing insurgency movements by different underground organisations representing different tribes in this region in the last seventy years have deep impacts on the children. Children in this region have to witness horrific terrors of ethnic violence, war related crimes, brutalities like rape, death of loved ones, poverty etc at a young age. The probability of being victim of child soldier, child trafficking and child labour becomes even higher due to the geopolitics of porous neighbouring borders, lawlessness and lack of functioning institutions and frameworks. Ensuring rights of child as envisaged in the UN documents and as well as in the Constitution of India in insurgent affected areas where there are conflicting claims is utmost challenging.

United Nations and Rights of Children in Conflict Areas

The United Nation to ensure the dignity and protection of innocence of childhood adopted and opened for signature, ratification the Convention of Rights of the Child in 1989 to resolve to recognised specific rights of child worldwide. It acknowledges the primary role of parents and the family in the care and protection of children, as well as the obligation of the State to help them carry out these duties². Accordingly, a child means every human being below the age below the age of eighteen³. It also envisaged that the State parties to take appropriate measures to ensure child is protected against all forms of discrimination or punishment⁴. In all actions concerning children by administrative authorities or legislative bodies, the best interest of the child shall be primary consideration⁵. That States parties shall respect the responsibilities, rights and duties of parents, legal guardians or local custom⁶. That state parties shall recognise the inherent right to life of every child and endeavour to the maximum possible the survival and development of the child⁷. Where the child is capable of forming his or her views in matters affecting him or her, the child's view must be considered and taken into account⁸. Thus, the UN convention in order to holistically protect the rights of child operates on the general themes of survival rights; development rights; protection rights and participation rights of the child⁹.

¹ INDIA CONST. preamble.

² The United Nations Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 November 1989 (Feb. 18, 2018), <http://childrensrights.ie/childrens-rights-ireland/un-convention-rights-child>.

³ *Id.* UNCRC. Art. 1.

⁴ *Id.* art. 2 (2).

⁵ *Id.* art. 3 (1).

⁶ *Id.* art. 5.

⁷ *Id.* art. 6.

⁸ *Id.* art. 12.

⁹ *Id.*

Survival rights in this context the inherent right to life and development of the child with basic nutrition, shelter, safe drinking water and access to medical services. Development rights include the best welfare of child in the context of family, duties of parents and legal guardians towards the education, safe healthy environment of family for all round development. Protection in this context means to safeguard the child persons against physical and mental exploitation, abuse or neglect of neglect of child. Participation rights include right to form independent view, to freely express her view and to be heard in any judicial and administrative proceedings¹⁰. States involved in armed conflicts, military operations in foreign territories or military rights operations shall take necessary steps to ensure the prohibition of persecution, torture, punitive measures, degrading treatment and violence against women and children¹¹.

According to UN report on children in armed conflicts where there is military operations, civilian unrests, shutting down of schools children left with no other alternatives are easily swayed to join armed groups or forces¹². Children are trained to use guns by the age of ten, they are drugged sent out to fight and commit atrocities¹³. According to the same report there are around 30000 soldiers spread over 30 countries around the world where there are armed conflicts¹⁴. The UN in order to curb the recruitment of child soldier under the Optional Protocol to the Conventions of Rights of Child had made it mandatory for all state parties to raise the age of recruitment in government forces to 18 years¹⁵. It is envisaged that 18 years would help in curbing recruitment of child soldier.

UN on Protection and restoration of Child in conflicts with law

The association of children with armed forces in most cases are owing to the circumstances. It maybe be due to acute poverty, to defend or to avenge or because of abduction and beaten into submission¹⁶. In UNICEF report on child soldiers, 16 years old boy from Battambang, Commbodia was forced to join the Royal Cambodian Armed Forces at the age 12 years to support his family after his father death. His duty included cleaning guns, patrolling, cooking

rice for his unit¹⁷. In another context of girl soldier in war torn Colombia, girls as young as 8 years are recruited as soldier by irregular armed groups. They taught to handle weapons, collect intelligence and take part in military combats. Male commanders use some of the underage girl soldiers to form sexual liaisons. They are made to take contraceptives and undergo abortion on getting pregnant¹⁸.

In 2002 UN General Assembly adopted the Optional Protocol¹⁹ which raises the minimum age of direct participation in hostilities to 18 years²⁰ with ultimate of end use and recruitment of child soldier. The Optional Protocol has made mandatory on the member states that state parties have ensure their armed forces no person below the age of 18 take part in direct hostilities²¹. UNICEF in this context is assigned the task of collaboration with Coalition to Stop the Use Child Soldiers had mobilise national and international efforts to attain this goal²². The International Labour Organisation Convention 182 by virtue of Articles 3 (a) declares that the worst for of child labour comprises all forms of slavery or practices similar to slavery of compulsory recruitment of children for use in armed conflict notwithstanding the other aspects of child trafficking, debt bondage and serfdom. Thus, the term child soldier has a very wide connotation, it includes child who might have been voluntarily or non- voluntarily recruited for armed conflict for direct combat, scouting or collecting intelligence. Girls who have been abducted and exploited physically and mentally by armed groups for physical labour or sexual exploitation are also covered.

For the purpose of restoration and rehabilitation of child soldiers Article 6 of the Optional Protocol provides:

Each party must take all necessary legal, administrative and other measures to ensure the effective implementation of and enforcement of the provisions of this protocol within its jurisdiction.

State parties undertake to make the principles and provisions of the protocol widely known and promoted by the appropriate means, to adult and children alike.

¹⁰ *Id.* art. 12, also freedom of association and freedom to peaceful assembly (art. 15)

¹¹ Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Proclaimed by General Assembly Resolution 3318 (XXIX) of Dec. 14, 1974, available at https://www.un.org/en/genocideprevention/documents/atrocities-crime/Doc.19_declarationprotection_womenandconflict.pdf.

¹² Guide to the Optional Protocol on the involvement of Children in Armed Conflict, UNICEF, Coalition to Stop the Use of Child Soldiers, (2003) 3 (Feb. 18, 2018), https://www.unicef.org/adolescence/index_19025.html.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 18 years norm is applicable to the non-state armed groups too.

¹⁶ Child Recruitment and Use, United Nations Office of the Special Representative of the Secretary – General for children and Armed Conflict, <https://childrenandarmedconflict.un.org/effects-of-conflicts/six-grave-violations/child-soldiers/> (last updated Aug. 10, 2017).

¹⁷ Adults war, Child Soldiers: Voices of Children Involved in Armed Conflicts in the East Asia and Pacific Region, UNICEF (2002) 6 (Feb. 18, 2018), <https://www.unicef.org/eapro/AdultWarsChildSoldiers.pdf>.

¹⁸ “You will learn not to cry”: Child Combatants of Colombia, Human Rights Watch Chap.7, ‘Girls’ (September 2003), <https://www.hrw.org/reports/2003/colombia0903.pdf>, (last updated Aug.10, 2017) also Guide to the Opt. Prot. *supra* note 12 at 11 .

¹⁹ The optional protocol to raise the participation of children direct armed to 18 years was first promulgated by the UN Commission for Human Rights in 1994 which was finally adopted by the UN General Assembly in 2000. It became legally binding in 2002 after the first 10 ratification by member nations.

²⁰ *Id.* at 4.

²¹ Optional Protocol to the Convention on the Rights of the Child concerning involvement of Children in armed conflicts, 322 INTERNATIONAL REVIEW ON THE RED CROSS (March 31, 1998), <https://www.icrc.org/eng/resources/documents/article/other/57jp4u.htm> (last updated Feb. 18, 2018).

²² *Id.*

States parties Shall take all feasible measure to ensure that persons within their jurisdiction recruited or used in hostilities contrary to this protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to these persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Indian scenario

The Indian juvenile justice legislation in India has attempted to balance welfares or best interest of the child and justice²³ in tandem with the peculiar socio-economic and political milieu of the country. Article 15 (3) of the Constitution provides that inter alia States are empowered to make special provision for children. Articles 39 (e) and (f) envisage that the State shall direct its policy towards securing the tender age of children are not abused for economic exploitation but to provide congenial environment to grow up in dignity. Further Articles 45 and 47 envisage that State to endeavour to provide education to children and protect the basic human rights of children. India had ratified the United Nations Conventions on the Rights of Children in 1992. It is mandatory that juvenile justice law in India prescribe and adhere to the standards of the UNCRC in case of child alleged as or accused of violating penal law or where child needs to be reintegrated²⁴.

Cases of Child in Conflict with Law

The maoist and insurgency movement in the different states of India for political and economic self determination is a big challenge for the Government of India. According to Asian Centre for Human Rights report there are at least 3,000 children are members of militant outfits and 500 of them are in the Northeast and Jammu and Kashmir and about 2,500 in Naxal affected states²⁵. India ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict on 30 November 2005. In its first ever report to the UN Committee in the implementation of the optional protocol, it reported that there is no children involved in armed conflict²⁶.

Case study of Child Soldiers

Northeastern state of Manipur share porous borders with Myanmar the hotbed of activities for the 40 plus recognised underground groups²⁷ in the state. The

difficult terrain and challenges of to establish the geo-political terrain has rendered it an ungoverned terrain²⁸. Assam Rifles who are mandated to police the border are stationed 30 to 50 km behind the actual border. Movement from one border to another does not require visas thereby rendering it the free movement regime²⁹.

In Manipur involvement of child in armed conflict seems to be prevalent since the 1990's, however its prominence became apparent with the news of report of abduction of Angom Langamba by underground outfit in 2008³⁰. The mother of the abducted child who herself is a widow called for press conference lamenting the involvement of armed militant³¹. The ensuing public outcry led to the revelation that 20 other children between the age of 10 -16 were all in the custody of armed groups³². In another sensational incident is the abduction of Alice Kamei, a 14 year old aspiring archer by the banned RPF/PLA groups along Sanahanbi Chanu to be recruited as child soldiers³³.

Modus Operandi of the banned outfits Recruiting Child Soldiers

Recruitment of child soldier by banned outfits in the state take place in a situation of hardship, helplessness or vulnerability of the community, parents and children. Some of the modus operandi of the banned outfit groups in recruiting child soldiers are as follow:

In majority of the situation have forcefully taken children from by threatening of with dire consequences.

Some of the children are lured away on the promise unspecified employment and in exchange of their labours concerned parents would be taken care of³⁴.

On other occasion a third party would be engaged to exploit the gullibility and vulnerability of young children from poor families by luring them with mobile phone, brand new clothes, shoes etc³⁵.

In some cases children were simply herded in playground and taken away by armed groups³⁶.

²⁸ Patricia Mukhim, Child soldiers of Northeast: Straddling between boundaries, *nelive*, Feb. 08, 2016, <https://www.nelive.in/> also <http://thenortheasttoday.com/child-soldiers-of-northeast-straddling-between-boudaries>, (last updated Feb. 18, 2018).

²⁹ *Id.*

³⁰ *Id.* at 26.

³¹ Chitra Ahanthem, Child Soldiers: Untold Story, *eclectic North East*, July 24, 2016, <http://eclecticnortheast.in/child-soldiers-untold-story>, (last updated Feb. 18, 2018).

³² *Id.*

³³ *Id.* at 26.

³⁴ Arijit Sen, There are at least 500 Child Soldiers Fighting in Northeast India, and the World Hasn't Noticed, *Time.com*, Mar. 25, 2014, <http://time.com/33008/child-soldiers-recruited-into-northeast-india-insurgencies>, (last updated Feb. 18, 2018).

³⁵ Kamei, *supra* note 26.

³⁶ Ahanthem, *supra* note 31.

In such a situation helpless parents or guardians are entrapped between threats enforced upon them armed groups and the longingness for their children³⁷. Many parents complain about this forced abduction to security forces but to no avail as they are held captive beyond the unfamiliar territory of Myanmar border³⁸.

Analysis of the Juvenile Justice (Care and Protection of Children) Act, 2015

The JJ Act, 2015 is to consolidate and amend the law relating to the children alleged and found to be in conflict with law and children in need of care a protection by catering to their basic human rights and to socially reintegrate them into the society. S. 2 (13) of the Act provides that 'child in conflict with law' means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. In the context of children in conflict with law in circumstance of armed conflict S.2 (14) (xi) of the Act provides that child in need of care and protection means a child who is victim of or affected by any armed conflict, civil unrest or natural calamity.

In the context of repatriation and restoration by virtue of S. 3 (xiii) it is envisaged that every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same economic and cultural status that he was in. Apart from presumption of innocence³⁹, it further provides that all past records should be erased except in special circumstances⁴⁰.

In the relevant context of child soldier S. 83 (1) of the Act provides that if any non-state, self styled militant groups recruits or uses any child for any purpose it shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to fine of five lakhs rupees.

With regard to rehabilitation and social re-integration of children in conflict with law by virtue of S. 39 Act provides two criteria: child who is not released on bail and child who is placed by the order of the board. The child who is not released on bail, his/her rehabilitation and social re-integration process shall be undertaken in observation home. For child placed by the order of the board it shall be in special homes or place of safety or fit facility or with fit person. On completion eighteen years of age the child may be provided with financial support in order to facilitate child's reintegration into the mainstream of the society at the time of leaving child care institution⁴¹.

³⁷ *Id.*

³⁸ Mukhim, *supra* note 28.

³⁹ JJ Act. *supra* note 24 at §. 3, cl. i

⁴⁰ *Id.* §.3, cl. xiv.

⁴¹ JJ Act. *supra* note 24 at § 39, cl.4 read with § 46.

Legal Plurality

In the North East Region the states of Nagaland and Manipur are the epicentre of majority insurgency activities of more than 40 different insurgent groups for self determination and protection indigenous tribal people rights. The disturbed area tag and imposition of Armed Forces (Special Powers) Act, 1958 to suppressed armed militant activities in these had been going on since the last more than four decades. Government of India had ratified the UNCRC Option Protocol 30 November 2005, in pursuant Article 3 (2) of the Optional Protocol concerning of the involvement of Children in Armed Conflict it had declared that the attested⁴² Armed Forces personnel is sent to the operational area only after he attains 18 years of age. It further declared recruitment in Armed Forces is purely voluntary free from forced or coerced recruitment⁴³.

The declaration of the Government of India holds true and relevant in the all other states of India where there are no maoist or insurgency related issues. The moot point is what is the accountability of armed groups in recruiting child soldiers that are actively operating in the within the territories of India. According to International Conventions armed groups, usually insurgent groups must satisfy certain objectives like responsible command; control over territory; sustained and concerted character of military operations; and ability to implement protocol⁴⁴. The issue is the Government of India able to ensure that the various underground armed groups that are operating within its territory and beyond but who have their vested interest within Indian Territory.

The Indian Constitution by virtue of Article 244, 244A read with Article 371 A to ensure higher inclusiveness of tribal communities in governance, protection and preservation of their peculiar culture, language and customary law had envisaged that no Act of Parliament shall apply to the state of Nagaland unless the State of Nagaland by a resolution so decides. In case of State of Nagaland v. Ratan Singh Etc. the appellate court had held that the CrPC provisions are not applicable in the backward tribal tract, rather it must be the spirit of the CrPC which should be applicable⁴⁵. In the context of the Manipur tribal people, who form major chunk of the armed militant groups, Article 371 C (2) provides that the Governor shall annually, or whenever required by the President make report regarding the administration in the Hill Areas in Manipur. Thereby, reflecting thriving of plurality of legal systems, applicable laws in the region among the different tribes.

Conclusion and Suggestions

The challenges and problems of child soldier among the tribal armed groups operating within and beyond the territory of India is real. India being a signatory

⁴² Indian armed personnel who have been prospectively recruited, enrolled and had completed requisite training period.

⁴³ Available at http://treaties.in.org/Pages/ViewDeatails.aspx?src+TREATY&mtmsg_no=IV-b&chapter=4 (last updated Feb. 18, 2018)

⁴⁴ *supra* note 21.

⁴⁵ (1966) 3 SCR 830 (India).

to the United Nation Optional Protocol to the Convention on the Rights of Child concerning involvement of children in armed conflict had declared that is no violation of the 18 years of age norm in recruitment of its armed personnel and that all recruitments are voluntary, free from force or coercion. In the same spirit, the Juvenile Justice (Care and Protection) Act, 2015 had been enacted keeping in tandem the international standards for rehabilitation and scheme of reintegration into mainstream society of children involved in armed conflict as child soldiers.

However, because of the dual approach of issue child soldier in the light state actors against non-state armed groups concerns remain as the applicability and efficacy of the JJ Act, 2015. For the state armed forces the mandates of the UN convention and the relevant law of the land is clear and unambiguous. However, when it comes to non-state armed group their accountability is not clear and the fact that their operation is beyond the Indo- Myanmar border makes it even more challenging to rescue reported cases of recruitment of child soldiers. As well the plurality of law and the legal systems in the region vide the Constitutional provision of Article 371 A and C in the states of Nagaland and Manipur raises highly complicated legal concerns technically and institutionally.

Keeping in view the above analysis it suggested that

Government of India and Government of the affected State must ensure that all the militant groups that are operating within its territory and beyond its territory but have vested interest inside the territory of India are made accountable towards the Optional Protocol.

Government of India and Government of the affected State with help of NGOs, UNICEF and ChildHelpLine groups to ensure proper dissemination of the Optional Protocol to prevent the recruitment child soldiers.

Government of India and Government of the affected State with help of NGOs, UNICEF and ChildHelpLine groups to chalk out platform for diplomatic exchange of views and ideas on the implementation of the optional protocol that the insurgent groups do not read it as a counter insurgency measures.

Government of India and Government of the affected State to workout workable logistics without administrative red tape to rescue probable as well as armed child soldiers in receipt of information.

Effort must also be made to overcome the plurality of law, legal system and administration of justice system in tribal areas of the North East in the exclusive matters pertaining to rights of children.



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