

VICTIMISATION OF CHILDREN IN ARMED CONFLICTS AND THE CHALLENGES FOR THE LEGAL SYSTEM WORLDWIDE

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ABSTRACT

Childhood is a period of development that means continuous, intense and fast changes. It is when human resources develop physically and mentally, learning and enhancing knowledge and skills from the surroundings. Due to armed conflicts this vulnerable group is forced to various critical situations like recruitment as soldiers in army, sexual violence against them, abduction etc. Armed conflicts affect each and every aspect of child's growth and development including physical, mental and emotional in the territories of such outbreaks. Past trends show that, those who are concerned with the situation of the children being affected in the armed conflicts have focused primarily on their physical health; the loss, grief and fear which a child has experienced also need equal consideration.

Undoubtedly, we are having multiple laws at the international and national levels. But due to the existence of gaps in implementation, inability or unwillingness on the part of the state, insensitive civil society and civil service all contribute to this inhuman situation. The researchers and others should respond to the need of the children and evoke interest among the others to take initiative in this field and make them sensitive towards the vulnerable and critical mental situation of these young victims of the society. This research paper is to understand the legal guidelines for military operations and civil conflicts with respect to involvement of children in global front. Here an attempt is made to highlight the sufferings and losses to children due to violations of these laws. The paper also tries to throw some light on the areas where the enforcement is lacking and to find out the possible areas of some improvement.

Keywords: *Civil conflicts, armed conflicts, children in armed conflicts, child soldier, Geneva conventions, war victims,*

INTRODUCTION

It is very sad that the world is continuously witnessing armed conflicts one after the other although the entire population in the territory is affected by such conflicts, the impact is much more severely felt by the vulnerable group more specifically children. In such situations they are exploited by their own people and by others¹. Since, childhood is entitled to special care and protection for the full and harmonious development, so children must be given an atmosphere of love, happiness and understanding. But due to armed conflict they suffer the most irrespective of availability of a series of international instruments as well as domestic laws and legal institutions²

OBJECTIVES OF THE STUDY AND METHODOLOGY

The object of this research paper is to highlight the critical position of children due to armed conflict in which they encounter with various scary situations like, killing their own family members, their kith and kin are killed in front of them, girls are raped in front of their family persons, their genitals mutilated by the belligerents, they are forced to get married for sexual purpose etc. They, obviously, suffer from malnutrition, various types of disease and of course they are mentally and psychologically harassed. In this paper we study about the various types of impacts of the arms conflict on the overall personality of those children who are directly or indirectly affected by arms conflict. Here we study the provisions at National and International regimes towards the protection of this innocent group. Also this paper analyses the legal guidelines for military operations and civil conflicts with respect to involvement of children in global front. Here an attempt is made to highlight the sufferings and losses to children due to violations of these laws. The paper also tries to throw some light on the areas where the enforcement is lacking and to find out the possible areas of improvements. Researchers try to explore different prevailing laws related to protection of childhood under different armed conflict scenario. So it is a doctrinal research of collecting the related information of children protection under armed conflict situations and other related issues for appropriate analysis.

ANALYSIS OF ISSUES AND RELATED LAWS

Children, who are exposed to such armed conflicts, have to face various types of atrocities and have to go through various critical conditions as the consequence. The consequences of this inhuman act include children participation in wars, molestation, physical and mental harassment etc. The victimisation is depicted as under followed by the examination of the prevailing laws thereto.

Child soldiers:

UNICEF defines a 'child soldier' as any person below the age of 18 that has been coerced or recruited by a regular or irregular armed group in any capacity; this includes cooks and

messengers. It also includes girls who have been recruited during armed conflict for sexual purpose and marriage. Therefore, it is not necessary that a child soldier be carrying a weapon.³ Due to international and non international armed conflict millions of children have been killed, disabled, orphaned, recruited as soldiers, separated from families and friends and denied the charm of being children for no faults of their.⁴

Under international humanitarian law recruiting children under the age of 15 as soldier is prohibited. Further, more International human rights law clearly states 18 years as the minimum legal age for participation in hostilities.⁵

Recruitment and use of children under the age of 15 is prohibited by the convention on the Rights of the Child and the Additional Protocols to the Geneva conventions.⁶ The convention on the Rights of the child's optional Protocol on the involvement of children in Armed conflict is (2000) requires state parties to increase to 18 years the minimum age for compulsory recruitment and for direct participation in hostilities.⁷ In addition, the optional protocol prohibits non state armed groups under any circumstances from recruiting or using children under 18 years.⁸

The international labour organisation's convention No.182 on the worst forms of child labour declares that recruiting children below the age of 18 is one of the worst form of child labour.⁹ The optional protocol insists that the parties to the conflict pay particular attention to all children involved in hostilities during the disarmament, demobilization and reintegration process, including special programs to provide for the psychological recovery and social reintegration of these children in to society.¹⁰

UNICEF estimates that in 2005 there were 250,000 children serving as child soldier.¹¹

There are still 63 countries that allows for the voluntary recruitment of people below the age of 18 including develop countries like Australia, United Kingdom and United States.¹²

The Lubanga case before the International Criminal Court:

On March 2012, The International Criminal Court Convicted Lubanga Dyilo of committing war crimes consisting of children under the age of 15 in to the forces parriotiques pour la Libration du Congo and their use for active participation in hostilities. He was sentenced by the ICC to a total period of 14 years of imprisonment. The court said that the line between voluntary and involuntary recruitment is legally irrelevant in the context of children's association with armed forces.¹³

South Asian countries also figure in the states and non state actors who continue to recruit children in to their field. Bangladesh, Pakistan, Sri Lanka and India (Kashmir) figure in the list of states and non states actors in this region to be having child soldiers. The Maoist in Nepal also has Recruitment camps of children¹⁴. The Sri Lankan children have been the worst hit in

this South Asian region both in terms of the impact of war has had displacement and recruitment of child soldiers¹⁵.

The Maoists in Andhra Pradesh Continue to recruit child soldiers. In Manipur, the militant groups have been recruiting child soldiers. There are cases of missing children first and subsequently found in the militant fold. A draft integrated on child protection scheme is also under consideration by the government though it does not contain any specific proposals relating to children involved in armed conflicts.¹⁶

Some NGOs and Human rights groups have been staging protests and demonstrations against the insurgents using children.¹⁷ Local human rights organization and the national commission for women have also expressed their concern about the employment of child soldiers in Chhattisgarh.¹⁸ However in India no systematic studies have been conducted to document the life of these child soldiers.¹⁹ In **Nandini sundar v. State of Chhattisgarh**²⁰ was actively promoting the activities of a group called '**Salwa Judum**', which was in fact an armed civilian vigilance group, and it would be appropriate for the National Human Rights commission to verify the serious situation. The court observed that due to violence perpetrated against youngsters, or their kith and kin and others in the society in which they live, have feelings of deep rage, hatred and to use such feelings in to counterinsurgency activities, is grave danger to their lives and the society as well.²¹

Sexual Violence against Children:

Since, rape is an underreported crime, accurate statistics on the full extent of its use in conflict situations are difficult to obtain. In Liberia, a 2005-2006 government survey of 1,600 women showed that thousands of girls raped and impregnated in armed conflict routinely denied abortion with devastating consequences. Some mutilate female genitals with guns, pieces of glass, wood, or heated plastic. Some take their victims to the forest and torture them as sex slaves for days, months, or years. In 1971 the West Pakistan Army was responsible for the rapes of some 200,000 Bangladeshi women, which resulted in approximately 25,000 children born of these rapes.²²

International criminal law explicitly criminalize rape and sexual violence during war time and judicial recognition of its customary statutes in international law came in 1998 with a number of ground breaking judgements by International criminal Tribunal for Former Yugoslavia (ICTY).²³

Sexual violence against civilians has been prosecuted by several international tribunals established to punish the perpetrators of international crimes. At the ICTY the **Furundzija** (1998) and **Kunarac** (2000) cases, a number of accused have been convicted for rape, torture and enslavement.²⁴ In addition, the SCSL established that forced marriage is also an offence under international criminal law when it found that three militia leaders guilty of crimes against humanity for forcing girls into marriage.²⁵

Geneva Convention and their additional protocols forbids rape and other forms of sexual violence during armed conflicts.²⁶

Geneva Convention provides the right of girls and women raped in armed conflict to abortion.²⁷

Article 27 of the 4th Geneva conventions explicitly prohibits such acts stating that “women (including girls) shall be protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”²⁸

Article 77(1) of Additional Protocol I to the Geneva Conventions explains that Children shall be the object of special respect and shall be protected against any form of indecent assault.²⁹

Article 37 Convention on the Rights of the Child explains that state parties must protect the child from all form of sexual exploitation and sexual abuse.³⁰

Optional protocol on the sale of children, child prostitution and child pornography: It came in to force on January 18, 2002. It provides standards for the treatment of violations under domestic law, including with regard to the offenders, protection of victims and preventive effort.³¹

Abduction of Children:

Abduction during armed conflicts may amount to a serious violation of international Humanitarian law and of children’s rights.³² State parties shall take all the appropriate measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.³³ The ICC has jurisdiction to hold to account those that enslave or deport children.³⁴

Attacks against Schools and Hospitals:

Parties to the conflict shall at all times distinguish between the civilians and combatants and between civilian objectives and military objectives and accordingly direct their operations only against military objectives.³⁵ Attacks against school and hospitals may constitute as a crime against humanity.

In December 2014, the deadliest slaughter of innocents in Pakistan. Taliban gunman attacked a military-run school and killed 141 people 132 were children and 9 were staff members. They burn a teacher alive in front of students. Another 121 students and 3 staff members were wounded.³⁶

The 4th Geneva Convention prohibits the targeting of civilian objects, emphasizing the importance of school and hospitals to the civilians population especially children.³⁷

Psychological Impact:

No doubt Armed conflict have vulnerable effect on physical health of a child but the loss ,grief and fear a child has experienced must be taken in to account .Armed conflict destroy homes, separates families, breakdown trust among people.³⁸

The Universal declaration of Human Rights (1948) and the International Covenant on economic, social and cultural Rights (1966), address the rights of all persons to enjoy the highest attainable standard of physical and mental health.³⁹

Refugee Children:

Armed conflict has always caused population movement. Children who are forced to flee to neighbouring countries as refugee are in need of special attention during armed conflict.⁴⁰

In 2006, it was estimated 18.1 million children have been displaced from their homes.⁴¹

There are many statutes passed by the legislatures in India that seek to prohibit and regulate child labour, suppression of immoral traffic as well as Juvenile Justice ACT, 2000.The Juvenile Justice Act of 1986 has been substituted with this new legislation on the basis of recommendation made by the U.N. committee on the Rights of the child that monitors the implementation of the convention on the Rights of the child. But these provisions are meant for the citizens and not for the others. This argument likely to fail in the context of children, particularly after India has undertaken the obligation under the convention on the Rights of the Child.⁴²

The Government of India, has taken action, at times more than what she could undertake, very clearly established the nature and extent of protection extended to refugee children irrespective of non ratification of the convention on the Rights of the child, 1989 without any reservation. Article 22 of this Convention seeks to protect the rights of refugee children.⁴³

In Nilabati Behra v. State of Orissa,⁴⁴ the court went to the extent of overriding the reservation in India had on the International covenant on civil and political Rights and held that individuals are entitled to compensation even in the absence of statutory law.

Vishaka v. State of Rajasthan,⁴⁵ the Supreme Court very effectively brought the international obligations India has undertaken to the protection of the rights of women and put in place a set of guidelines regarding sexual harassment of women in work places in the absence of any specific law.

Health and Nutrition:

In such types of critical situations children cannot enjoy the benefits of good health, nutritious food, stable environment, security play etc. That is made available to them by the family.⁴⁶

As seen the conflict in the Democratic republic of Congo, children are more susceptible to death due to disease and malnutrition that are a by product of war. Out of the 5.4 million deaths on record, more than half were children, though children only account for one fifth of the population.⁴⁷

Indian government has allowed international NGOs to raise funds for any humanitarian emergencies in India.⁴⁸ In *Jage Ram v. Union of India*⁴⁹ to provide the relief to the affected parties over period of time in the absence of national policy on this issue supreme court has interpreted the provisions of The Indian Constitution and the laws made by the union in a focused manner.

National policy on relief and rehabilitation has been issued by the government of India in early 2007.⁵⁰

CONVENTION ON THE RIGHTS OF CHILD ⁵¹

1. Right to life (Article 6): Children have right to live. Governments should ensure that children survive and develop healthily.

2. Right to acquire nationality (Article 7): All children have right to a legally registered name, officially recognised by the government. Children have the right to a nationality and also have the right to know and as far as possible, to be cared for by their parents.

3. Right to freedom of expression (Article 13): Children have the right to get and share information, as long as the information is not damaging to them or others. In exercising the right to freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

4. Right to freedom of thought, conscience and religion (Article 14): Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should help; guide their children in these matters.

5. Right to education (Article 28): All children have the right to a primary education, which should be free. Wealthy countries should help other countries to achieve this right.

6. Right to freedom of association and peaceful assembly (Article 15): Children have the right to meet together and to join groups and organizations, as long as it does not stop other people enjoying their rights.

7. Right to benefit from social security (Article 26): Children have the social security right either through their guardians or directly through government if they are poor.

8. Right to standard of living adequate for child's physical, mental, spiritual and social development (Article 27): Children have the right to a standard of living that is good enough to meet their physical and mental needs.

9. Right to health and health services (Article 24): Children have the right to good quality health care – the best health care possible – to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

10. Right to the protection of the law against arbitrary or unlawful interference with his or her privacy, family and home (Article 16): Children have a right to privacy. The law should protect them from attacks against their way of life, their good names, their families and their homes.

OTHER MECHANISM⁵²

At National level there are various Acts, some of which are e.g. Rajasthan Child Policy, Bombay Prevention of Begging Act, 1959, Goa Children Act, Tamil Nadu Nutrition programme etc. Child assistance booths and child protection committees; arrangement for training and sensitization of police.

Child related policies

The National policy of children, 2013
National Nutrition Policy, 1993
Health Policy, 2002 etc

National Actors

National Human Rights Commission
National commission for the Protection of child Rights Act, 2005 etc

International mechanism

United Nations Conventions on the Rights of the Child
Committee on the Rights of the child optional protocol
Special representatives for children etc

LOOPHOLES

Despite the rules laid down by international law and national law, thousands of children are nevertheless taking an active part in hostilities and are themselves the innocent victims of those events. Their problems are not taken seriously by the others.

There are grave breaches of customary norms of International Law. The belligerents often violate the obligations contained in the Geneva Conventions and Additional Protocol and other international and regional human rights treaties. They have nothing to do with the laws. Even today some of the developed Countries recruit child soldier.

CONCLUSION AND SUGGESTIONS

The worst crime of all of us is neglecting the violence against children but they are not as cheap as we think about them. For their best human potential, they need proper facilities, dealing and environment. We are having laws for their protection but still this vulnerable group is exploited in all directions just because they are children. So where is the problem? People need to educate about children's problems and they need to make aware of child protection committees and child protection booths, and for this there should be use of various modes of communication. Proper implementation of laws is required. At the grass root level large scale to promote knowledge of and compliance with International Humanitarian law needs to be carried forward in order to ensure true respect for children's issues. The state should include the concept of child specific protection in peace time training at all levels of the Armed and National security forces. Harsh punishment should be awarded by the Court if any person, group of persons found guilty of committing any type of inhuman atrocities against children.

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