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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CHILD ABUSE V HUMAN RIGHTS: FIGHT FOR JUSTICE

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ABSTRACT

Child abuse represents a gross violation of fundamental human rights, stripping children of their dignity, security, and developmental well-being. This paper explores the deeply entrenched crisis of child abuse—physical, emotional, sexual, and neglect—and positions it within the broader framework of international human rights law. Despite the existence of robust legal instruments such as the United Nations Convention on the Rights of the Child (UNCRC), national legislations often fall short in ensuring effective enforcement, victim protection, and systemic accountability. The discourse critically examines how structural violence, poverty, patriarchal norms, digital vulnerability, and lack of awareness contribute to the silent perpetuation of abuse across societies. Further, it interrogates the role of state institutions, judicial systems, and civil society in both perpetrating neglect and in resisting it through reform, rehabilitation, and redress. The paper contends that child abuse is not merely a social issue but a legal emergency that calls for a rights-based approach to justice. Through a comparative analysis of global best practices, recent Indian case laws, and policy gaps, the study argues for a transformative justice model—centered on the child as a rights-holder rather than a passive victim. The abstract concludes by emphasizing that the fight against child abuse is inseparable from the larger struggle for human dignity, and demands a coordinated, multi-sectoral response rooted in law, empathy, and equity.

Keywords: Child abuse; human rights; justice; UNCRC; child protection; legal framework; structural violence; child welfare; rehabilitation; judicial accountability; rights-based approach; transformative justice; India; global best practices; victim support.

1. INTRODUCTION

Children are future of Nations. They are the custodians of our rule of law, justice, equality and fraternity. Inherent right is conferred by nature upon all human beings and children. This right is conferred from the stage of formation of foetus. Inherent rights of humans cannot be nullified by state. Such rights are compulsorily guaranteed and recognized by the state. The first instrument specific to rights of child was a Declaration of the Rights of Child in 1924 which was adopted by League of Nations in Fifth Assembly. Child's right is an inevitable concept for saving children from exploitation, abuse and neglect across the world, which also includes child labor, sexual exploitation, children living on streets, children with disabilities and discriminations on the basis of religion. Idea of Child's emerged during 20th century, the concern in this approach was providing Social justice, equality and empowerment to children. Active role played by Canada in encouraging child's right resulted in United Nations Convention on Rights of Child November 30 1989.¹ Child abuse is a global problem which affects the child in long run. Child abuse includes physical, emotional, ill treatment, sexual abuse and neglect which harms the growth of child, survival, development and dignity. International studies reveal that 2-4 years of age group suffer regular physical punishments by their parents or care giver. In 1 out of every 5 women and in 1 out of every 13 men have been sexually abused during their childhood. Childhood knows no good or evil, no pain and anxiety. It is initial stage of life which is prime part for development of children. The person he/she will become depends upon the type of childhood one had. Because, ill-memory of abuse will always flashback and hamper the physical and mental growth of child. Child abuse is a serious crime but in India it is still a taboo, open discussions and events of child abuse are often brushed aside in fear of confrontations and shame.

1.1 Who is child?

According to Article 1 of United Nations Convention on the Rights of Child, human beings below the age of 18 years, unless under the applicable law majority is attained earlier to these will be considered as child.

1.2 Child's Right

Child's right is same as human rights. Children's are not helpless object of charity neither they are property of their parents. They are human beings having their own rights. The U.N

¹ <https://www.who.int/news-room/fact-sheets/detail/child-maltreatment>

Convention on the Rights of Child focuses on the human existence, development and dignity of children. It also states that all children should have basic quality of life. To develop the full potential in all situations and to protect them from abuse and harmful situation UN convention was formed. Child abuse is the worst form of denial of child's right. Child abuse includes physical, sexual, psychological and neglect. According to 2018 child maltreatment report of (National Child Abuse and Neglect Data) estimated 7.8 million children were maltreated. Around 6,78,000 children were victim of abuse and neglect. 60.8% victims suffered neglect, 10.7% victims suffered physical abuse, 7% victims suffered sexual abuse and 2.3% victims suffered psychological maltreatment and 0.8% suffered medical neglect. 12.3% of victim were reported with caregiver alcohol abuse. 30.7% of victim were reported with drug abuse by caregiver. **Poverty and water crisis in India**- there is remarkable growth in economic sector of India. But despite such growth there is no change or development in conditions of people living in slums. The major problem which contributes to poverty is sanitation and drinking water crisis. Access to potable drinking water is still a problem in rural parts of India which comprises of 73% of Indian Children.

1.3 Human Rights

Human rights are rights which provide protection to all individuals and recognizes the dignity of all human beings. It is a governing body on how individuals live in society, their behavior and their relationship with each other and with the state. In exercising human rights one oneself, rights of other must be respected. Human rights are inalienable and Universal. It confers right to every person across the globe. It is not up to individuals to surrender their human rights neither they can take away someone else's right. Civil, political, cultural, economic and social rights are all inherent rights of person. Among these rights no right is small or large, all have equal status. Human rights guarantees individuals, no discrimination on the basis of religion, age, sex, race, language, region, disabilities, birth or any other as explained by treaties body of Human Rights.²

1.4 The Universal Declaration of Human Rights³

It is a significant document drafted by representatives of different background of legal and cultural values across the world. This declaration was officially introduced by UN General

² <https://www.un.org/en/universal-declaration-human-rights/>

³ <https://www.un.org/en/universal-declaration-human-rights/>

Assembly on December 10th 1948 in Paris as standard for common goal for all human beings across world. Fundamental human rights are inserted by this declaration which provides protection universally to all human beings. It has 30 Articles and the Declaration is translated into 500 languages.

1.5 Five Basic Human Rights declared by UDHR

- 1) **Article 1-** Right to equality, all human beings have equal rights and they are required to act towards each other with brotherhood spirit.
- 2) **Article 2-** No discrimination – every human being has freedom to live without being discriminated on the basis of Color, sex, race, language, religion, political opinion, origin, birth or socio-economic status
- 3) **Article 3** – All human beings have right to life, liberty and security. Right to life includes right to have safe environment, basic education.
- 4) **Article 4** – Right to live life free from slavery and slave trade and all other forms of it.
- 5) **Article 5** – Protection from torture, inhuman treatment or cruel and degrading punishments.

In, The chairman, Railway Board & Ors v Mrs Chandrima Das&Ors 2008

Smt Hanufa Khatoon was a Bangladeshi National and Railway employee was a victim of Gang Rape, it was argued in the court that she has no protection under the Public Law which is Guaranteed by Indian Constitution by way Of Part III Fundamental Right. This argument failed due to two reasons, Indian domestic jurisprudence provides protection to all the people under Fundamental Rights guaranteed under Part III of the Constitution and second Universal Declaration of Human Rights has to be followed strictly by all signatory states. International Code of Conduct has to be recognized while dealing with the human rights in domestic sphere that Human Rights are universal in nature.

In Suo Moto vs State of Rajasthan 2005- Rape of a woman tourist of Foreign national evoked the judiciary to take Suo moto cognizance under article 226 of the Indian Constitution. No relief to the victim be given under the Public Law as she was a foreign national was held invalid in this case too by the way of Universal Declaration of Human Rights which states under Article 3 that all human beings including women be given protection from violation, secured environment, which has to be followed by all signatory states.

In Seenath Beevi vs State of Kerala 2003- Regularization of working hours, by reasonable time schedule is obligation upon the employer. Article 21 of the Indian Constitution, Right to life includes leisure and rest from employment. Article 23(1) of Universal Declaration of Human Rights says all humans have right to chose their employment, to have favourable working condition and protection from unemployment. Article 24 of declaration gives human beings to have rest and leisure, limited working hour and paid periodical leave.

1.6 Child Abuse

- 1) **Physical Abuse-** Physical aggression by an adult on child. Bruises, scratches, burns, broken bones and repeated accident, harsh treatment are all form of physical abuse. Since 1979, 34 countries have discontinued corporal punishment to children. According to psychologist Alice Miller in her book on child abuse stated that humiliation, slaps, beatings are all part of abuse, because it harms the integrity and dignity of child in long run. Corporal punishments are practiced in schools to give physical pain and discomfort to the children upon some misbehavior is also part of physical abuse. Corporal punishment includes pinching, pulling, spanking, slapping and hitting children with sharp or hazardous objects.
- 2) **Sexual abuse-** an adult person who abuses a child forcefully for sexual stimulation. Sexual abuse includes forcing to engage in sexual activities, display of pornography content, actual sexual contact or physical touch of genitals of child. The effects of such abuse are very grave in nature. It affects the child's mind, including guilt, flashbacks, issues with self-esteem, chronic pain and addiction. Around 15% to 25% of woman and 5-15% pf men were sexually abused during their childhood. A survey in India by RAAHI Foundation on sexual abuse showed that 76% of people were abused in their childhood out of which 40% of abuse was done by the close member of family.⁴ According to National Crime Record Bureau report in 2018, 109 children were reported victim of sexual abuse in India every day. National Crime Record Bureau data of 2017 shows that nearly 32,608 cases of child sexual abuse were reported in India. 39,827 cases were reported in 2018 under Protection of Child from Sexual Offences Act. Protection of Children from Sexual Offences Act was enacted to provide protection from sexual offences, sexual harassment, child pornography. It sets up special court,

⁴ <https://www.indiatoday.in/india/story/109-children-sexually-abused-every-day-india-2018-1636160-2020-01-12>

special prosecutor for dealing with the matter of Child Sexual Abuse.⁵ Every second child in India has experienced some form of sexual in their lives before the age of 18 years. Most often the abusers are a close family member or a person known to them. Even during Lockdown, in Covid-19 situations when everyone was advised to stay indoors, cases of child abuse increased dramatically. Ministry of Woman and Child Development through CHILDLINE received around 92,105 calls about the violence and abuse towards children.

- 3) **Psychological Abuse-** emotional abuse is an initial stage of production of social defects in growth of child which further affects the behavior of child. Psychological issues are developed by children who are victim of abuse. Isolation, verbal abuse on daily basis, non-physical threats, controlling of child, insults, bullying, teasing, exposure to violence in family etc are the psychological abuse.
- 4) **Child trafficking-** children are trafficked to carry out various activities like sexual exploitation, bonded labor, drug transferring, child soldiering, begging. Due to the criminal nature of this practice the reliable estimate of trafficked children are not obtained from any sources. According to International Labor Organization each year around 1.2 million children are trafficked. Trafficking is a serious concern in India. According to report of U.S Department of state, India is Source, destination and transition for trafficking of men women and children who subjected to force labour and sex trafficking.⁶
- 5) **Child marriage-** minor marriage which sometimes take place even before attaining puberty. Child marriage is violation of child's right as it takes place without their consent when they are in no capacity to give consent. Child marriage expose children to high risk of exploitation, abuse, violence. India is the country with highest number of brides across the world. Bangladesh is reportedly the country with highest child marriage rate. Child marriage is still prevalent in various parts of South Asia. Child marriages are done as part of socio-economic interplay.
- 6) **Child Labor-** child labor is the result of lack of food, inadequate resources to live a standard life, poverty, social and economical situations. Child labor is a hazardous situation which plays vital role in denying the development of required skills, it also takes away skills and education from a child which would help them achieve good job

⁵ <https://thelogicalindian.com/exclusive/lockdown-child-sexual-abuse-cases-20852>

⁶ <https://www.cry.org/issues-views/child-trafficking>

in future. Lack of education can be reason of tradition and customs. To root problem of child labor can be solved through education which should be free for every child across the world and by recognizing the needs and requirements of children.⁷ As per the 2011 census, population of age group of (5-14) year of age group is 259.6 million out of which 10.1 million are working children. According to report of UNICEF 2017 12% of children are working out of which 4.5 million are girls and 5.6 millions are boys. And 42.7 million are out of school children.

2. WHAT IS CHILD'S RIGHT IN INDIA?

United Nations on the Right of the Child 1992 is ratified by India which gives lists of Right of Child.⁸

- **Right to protection**- according to convention it gives freedom to children from exploitation, abuse and discrimination. It guarantees protection of children in times of armed conflict and emergency. The motive of this provision is to safeguard children from advantage seekers.
- **Right to Survival** – right to life, adequate standard of living, right to health, proper nutrition is conferred by this right. It also confers right to have name and nationality. Right to health is a key provision in child's right, lack of safe drinking water, sufficient sanitation is all part of right to health and survival. Right to have birth certificate is guaranteed by article 7 and article 8 of the declaration. By registering birth it will aid in exercising rights of person.
- **Right to development** – this right includes right to education. Education in India is a problematic barrier to children's right. The rate of illiterate people in India is very high. Through this right individuals can support for development and care during childhood. Indian government is fighting illiteracy by providing high quality education to all age groups.
- **Right to Life**- Article 21 of Indian Constitution confers rights to individuals – no person shall be deprived of his life or personal liberty. Despite the existence of such rights in our constitution, survival and development of child still remained a problem in India.

⁷ Unicef annual report. <https://www.unicef.org/reports/annual-report-2019>

⁸ <http://www.legalserviceindia.com/legal/article-11-protection-of-childrens-human-rights-in-india.html>

- **Right to freedom of speech and expression**- right to protection against neglect, abuse, discrimination at workplace or home or anywhere else. Protection from sexual abuse and physical abuse, exploitation, violence, neglect, trafficking or child labor by parents or caregiver. Cultural values of not standing of the words and opinion of children in house contributes to neglect. Discrimination on the basis of sexual orientation was removed by UN Convention. In India before Decriminalization of Article 377 LGBT+ community had to face discrimination. This old law deprived children and subjects of LGBTQ+ their fundamental right.
- **Right to Identity** – The highest non-registration rate of the children is in India. It is the right of the child and of every human being to have nationality, name and identity. In India out of total births only 41% are registered.

2.1 Some important rights conferred by United Nations Convention on Rights of Child⁹

- i. Article 1 of the UN declaration- every child has right under this convention. Below the 18 years of age is a criteria for determining who is child.
- ii. Article 2 states that the rights conferred by convention is applicable to all the children regardless of their race, religion, abilities, background, language, region, disabilities etc.
- iii. Article 3 of the Convention states that the organizations associated with children should work towards their betterment.
- iv. Article 6 of the Convention- right to life, government should ensure healthy and safe environment for development of child.
- v. Article 7 provides right to identity, all children have right to have name, nationality and recognition.
- vi. Article 12 gives freedom of thought and expression- when parents makes decision on behalf of children, which are affecting the child they have right to express their view. And what they believe.
- vii. Article 16 gives right to privacy, protection from external pressure against the way of life they want to life.
- viii. Article 19 Government should ensure that children are properly taken care of, to safeguard them from external violence, abuse neglect etc by their parents or caregivers.

⁹ https://www.smilefoundationindia.org/child_rights.html

- ix. Article 23 of the convention gives special rights to children with disability. Extra care and support should be given by the government to grant them independent life.
- x. Article 28- children have Right to education through this convention. While dealing with children in schools, their human dignity should be kept in mind.

3. INDIAN CONSTITUTION AND CHILD RIGHTS

Indian Constitution is the supreme law of land. Fundamental rights and Directive principles of state policy is granted to citizens by constitution. The responsibility on the state is imposed by Fundamental Rights. It also ensures that all needs of children are met and protected. Violation of Fundamental rights can be brought before the court. Here are some fundamental rights that directly concerns children.

- Article 15(3) provides that special provisions for children to be made by State.
- Article 21-A provides free and compulsory education to all children of 6-14 years of age.
- Article 23 prohibits human trafficking including that of children. This article also criminalizes human trafficking in India.
- Article 24 – no child below 14 years of age can be employed in any hazardous work. Prohibition of child labor in mines, factories and other harmful conditions.

In M Veersamy v State of Tamil Nadua 2012- Child victim of sexual abuse, the defendant was directed to give compensation of 2,00,000 to the victim child.

Sakshi v Union of India- a petition was filed in the court to include all forms of sexual penetration in Section 375 of IPC. Specially for Child Sexual Abuse victims.

In State v Rahul 2013 JCC court in its own motion – to avoid the trauma in child victim or child witnesses, a special arrangement should be made for child to avoid seeing the accused while giving testimony. It can be done by video conferencing or close circuit television.

In Central Bureau of Investigation v Birendra Kumar Singh 2013 – a child victim was sexually exploited for commercial gain by the defendant after bringing her from Darjeeling on pretext of giving her job. The victim was later rescued by the Anti Trafficking Unit of the Central Bureau of investigation.

3.1 Directive principles of State Policy that relate directly to Children

- Article 39(a)&(f)- states that State shall direct its policies towards securing children. Facilities and opportunities be provided to child for development in healthy manner,

and they should be protected from all forms of exploitation.

- Article 45 – early childhood care should be endeavored by State.
- Article 51- A imposes duty upon parents and guardians to provide their child opportunities for education. Compulsory education from 6-14 years of age.
- 86th Amendment Act 2002 inserted Article 21-A, which gives free and compulsory education to children between 6-14 years of age.

4. PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012¹⁰

The act was introduced by the Ministry of Woman and Child Development to address the offences related to sexual abuse and sexual assault of children through strict legal provisions.

Prevention of Children from Sexual Offences Act 2012 is a gender neutral act in the interest and welfare of child as it gives primary importance to development of child's intellect, skills, emotional and physical balances. The act identifies different forms of abuses and provides punishments for the same. This act provides for punishments of penetrative and non-penetrative assaults, sexual assault, pornography of child. Traffickers who use children for commercial gain through forced sexual assault are punished under this act. The act prescribes punishment on the basis of graveness of offence with maximum imprisonment and fine.

Unknown v Dhananjay Singh Anr 2015 – victim was a 13 year old girl child who was subjected to forced rape. Under POSCO act child is defined as a person who is under the age of 18 years. Thus the victim girls was child at the occurrence of the offence.¹¹

4.1 Prevention of Child abuse

Intervention in child abuse reduces the risk and promotes the growth of the children.¹² The protection that is provided by families and community is very important as it contributes greatly to increase healthy and safe environment for development of child. Understanding and preventing child abuse and neglect, American Psychological Association examines the risk associated with the abuse and neglect in child. Child abuse and neglect or any other form of ill-treatment directly affects the mind of child which further becomes a blockage in their physical growth also. The effect of such ill-treatment can affect children in long run. Children who are

¹⁰ <https://vikaspedia.in/education/policies-and-schemes/protection-of-children-from-sexual-offences-act>

¹¹ Indian Kanon <https://vikaspedia.in/education/policies-and-schemes/protection-of-children-from-sexual-offences-act>

¹² <https://www.childwelfare.gov/>

victim of any kind of abuse are more prone to develop depression, suicidal tendencies and other harmful effects. Schools should arrange programs for children to bring awareness to them regarding the Bad touch and Good touch which might help them avoid the harmful scenarios. In United States since 1983 April is celebrated as month of Child Abuse Prevention. In the year 2009 President Barack Obama declared officially April as month of Child Abuse Prevention. In India also April is celebrated as National Child Abuse Prevention Month.¹³ In India nearly 53% children have admitted to have been victim of Sexual Abuse, which the highest rate across the world. In India around 174 children go missing each day out of which only half of them are found. Many become victim of trafficking, murder forced labour including begging and stealing and for commercial sexual exploitation. In 93% of the cases it has been found that the abuser is a person who is well known to them. Parents have to be more attentive towards their child. They are required to be integral part of their children's life. They should create a comfortable environment for them so that if any ill-treatment is faced by children they will feel free to share it with their children. Parents should be aware of the surroundings of their children.

Protection of child is a fundamental right of child guaranteed by UN Declaration of rights of child. If there is failure in providing protection to child, all other child rights will be adversely affected. The focus of protection should be on vulnerable group which includes children from poor socio-economic background, homeless children, children who are abandoned by their guardians or parents, children who are orphan, child labour, forced child marriage, victim of conflict, children who are victim of deadly disease like HIV/AIDS and others.

5. CONCLUSION & RECOMMENDATIONS

Child abuse is a global problem which can be tackled by nations through universal recognition of the rights of the child. Child focused culture should be adopted by nations to reduce the rate of abuses. UN convention of Rights of Child was a significant move to enforce the basic rights of child by providing protection, opportunities and security to children. It is required by all signatory nations to abide by the provisions of the UN Convention on Rights of the Child. India is a hub for trafficking of child, to eradicate the offences related to the child abuse and sexual offences POSCO act under Ministry of Women and Child development was introduced to punish the person associated with abuses and assault in children as well as person who

¹³ <https://www.newindianexpress.com/nation/2019/apr/18/child-abuse-in-india-what-more-can-be-done-1966000.html>

trafficked children for commercial gains. Here are some recommendations we should take :-

- i.** *Government should along with the state government take measures to prevent child abuse. It should set up support centers in all cities, towns and villages.*
- ii.** *Sexual education should be imparted to children through various programmes in schools. Schools should take active part in creating awareness among children about the sexual abuse, good and bad touches.*
- iii.** *Government should set up free help lines across the nation. This should be made 24*7 available for child abuse victims to report.*
- iv.** *Prevention committees should be set up for eradicating child abuse and aiding the victims of abuse to get over the trauma by providing various therapies.*
- v.** *Opinion of children should be respected. Their human dignity should be given respect.*
- vi.** *Local level committees should be set up for providing protection to children from any form of abuse.*
- vii.** *Prevention of traditions and practices which are form of abuse.*
- viii.** *Safety should be ensured by School.*
- ix.** *It should be the duty of parents to compulsorily accompany their young ward to school.*
- x.** *There should be special police force dealing with the rights of the child.*
- xi.** *Special campaigns regarding the awareness of child right.*

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