

## **Exploring The Evolution of Child Rights: Theoretical Perspective**

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### **Abstract**

The article is an attempt to examine the historical evolution of the international framework of child rights. The study primarily concentrates on various dynamics and the changing patterns in the field of child rights which have contributed in the construction of the contemporary universally acceptable framework of child rights. The article in its findings establishes the argument that the framework of child rights has not originated and developed as a universal conception. Rather, it formally originated and developed as a Western concept. Even in the Western socio-political discourses, it did not develop in countries or continents as similar and parallel concept. However, with the influence of the United Nations as the universally acclaimed institution for the recognition of human rights, the concept of child rights designed and proposed by it has been generally recognized as the international framework of child rights.

**Keywords:** Children, Human Rights, United Nations, Declarations, Conventions.

Children and childhood across the world, have broadly been construed in terms of the 'golden age' that is synonymous with innocence, liberty, happiness, engage in recreation and the like. Childhood is the period, when the children learn about their surroundings and get socialized about various aspects of the society. In addition, these rights need to be cared for and protected from the severity of the world outside' and around. Therefore, child rights are concentrated human rights that concern to all human beings below the age of 18.<sup>1</sup>

According to Eglantyne Jebb, "every generation of children offers to maintain the possibility of rebuilding his ruin of a world".<sup>2</sup>

Children are the future hope of the society. They are like buds which need to be properly nursed and well taken care of so that they bloom fully and grow as able

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<sup>1</sup> Savita Bhakhry, *Children in India and Their Rights*, New Delhi: NHRC, 2006, p. 9.

<sup>2</sup> Michael Goodhart, *Human Rights Politics and Practices*, United Kingdom: Oxford University press, 2013, p. 198.

human beings and contribute their worth to as development of the society.<sup>3</sup> They are also the most valuable asset of any nation because children constitute the real wealth of the country. A happy child is a symbol of the development of society and the progress made by mankind. The future of any society depends on the attention that is provided at any given moment to its children. There is a popular saying, “as the twig is bent, so will the tree grow.” Therefore, a happy childhood is the basis for a stable and strong adulthood.<sup>4</sup> Conducive and congenial environment is the basic necessity for children to develop as good citizens. Beside this, they need to be properly clothed, adequately fed and carefully protected against various hurdles that inhibit their overall growth.<sup>5</sup> Generally, early childhood is noticeably one of the most vital periods of development that is characterized by rapid growth, specific environmental needs, maximal dependence on caretakers and great vulnerability.<sup>6</sup> Moreover, childhood is an important phase of life because the entire life structure is based on it. Therefore, it is essential for parents, teachers, society and government to familiar with the importance of childhood.<sup>7</sup> The Oxford Children’s illustrated Encyclopedia corroborates that “childhood is the time of life when babyhood is over and yet the child is an adult. The end of childhood is marked by beginning of puberty and adolescence”.<sup>8</sup> In fact, it is a time and an experience totally different from the rest of life; it ought to be best part of lives. No one knows it better than children.<sup>9</sup> Beside this, the term childhood denotes that period in human’s lifespan from the acquisition of language at one or two years to the onset of adolescence at twelve or thirteen years.<sup>10</sup>

Although children are regarded as God’s Apostles who come to this world bringing the message of God. In spite of this idealism, their destiny depends upon the status and conditions of their parents and circumstances of the society. They are generally not regarded as separate entities with distinct interests and attitudes and they are taken for granted. Due to their physical and mental immaturity, children are vulnerable sections of the society. They require special rights to protect themselves

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<sup>3</sup> M.C. Patel, R.C. Talati and S.K. Patel, The Problems of Child Labour in India: Some Issues, in S. Murty, *Child Labour in India: Causes, Consequences and Cures*, Jaipur: RBSA Publishers, 2001, p. 13.

<sup>4</sup> Sr. Lillykutty, The Toil of Innocent- A Challenge to the New Millenimum, in S. Murty, *Child Labour in India: Causes, Consequences and Cures*, Jaipur: RBSA Publishers, 2001, p. 161.

<sup>5</sup> Neel K. Sharda, *the Legal, Economic, and Social Status of the Indian Child*, New Delhi: National Book Organization, 1988, pp. 25-26.

<sup>6</sup> Robert Heiner, *Social Problems: An Introduction to Critical Constructionism*, New York: Oxford University Press, 2002, p. 76.

<sup>7</sup> Medh Irani Dutta, The Problems of Child Labour and Economic Policies in India, in S. Murty, *Child Labour in India: Causes, Consequences and Cures*, Jaipur: RBSA Publishers, 2001, p. 1.

<sup>8</sup> *Oxford Children’s Illustrated Encyclopedia*, New York: Oxford University Press, 1998, p. 104.

<sup>9</sup> Beatrice Gross and Ronald Gross (eds.), *the children’s Rights Movement*, New York: Anchor Press, 1977, p. 320.

<sup>10</sup> Jacob E. Sfraand James E. Goulka, *the Encyclopedia of Britannica*, Vol. 3, USA: Encyclopedia Britannica Inc., 1997, p. 207.

and also meet their unique needs.<sup>11</sup> The child should be fully prepared to live healthy and happy life in society, especially, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.<sup>12</sup>

## CONCEPTUALISING CHILD RIGHTS

The idea of rights affirms that rights are implanted in human beings, while individualism consigns individuality as the fundamental category of human existence.<sup>13</sup> A child is “renowned as every human being below the age of eighteen years, unless national laws recognize an earlier age of majority”.<sup>14</sup> The term “child” does not necessarily mean minor but can include adult children as well as adult non-dependent children.<sup>15</sup> Likewise, ‘Child’ means a boy who has not attained the age of sixteen years and in the case of girl who has not attained the age of eighteen years.<sup>16</sup> According to Shorter Dictionary it means “as correlative to parent, the offspring, male or female, of human parents”.<sup>17</sup> De La Suz Silva defines a 'child' as "someone who needs adult protection for physical, psychological and intellectual development until able to become independently integrated into the adult world".<sup>18</sup>

John Locke defines the child as a tabula-rasa for “blank slate”. According to this idea, children begin as nothing at all; their characters are shaped entirely by experience. Locke saw parents as rational tutors who can form the child in any way wish through careful instruction, effective example rewards for good behaviour. Basically, Locke’s philosophy led to a change from harshness towards children to kindness and compassion.<sup>19</sup> Further, Jean Jacques Rousseau reacted against the idea of Locke and introduced a new vision of childhood. He claimed that children are not blank slates or empty containers to be filled by adult instructions. Instead, they are noble savages, naturally endowed with a sense of right and wrong and an innate plan for orderly, healthy growth. His philosophy was child-centered in which the adult should be accessible to the child’s needs at each of four stages; infancy, childhood, late childhood and adolescence.<sup>20</sup>

On the other hand, the word ‘Rights’ is generally taken to mean “the standard of acceptable and prohibited action within a certain sphere lawfully

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<sup>11</sup> Asis Kumar Das and Prasant Kumar Mohanty, *Human Rights in India*, New Delhi: Sarup Sons, 2007, p. 151.

<sup>12</sup> *Human Rights A Compilation of International Instruments*, Vol. I, United Nations Publication, 2002, p. 181.

<sup>13</sup> Stephen Chan, Buddhism and Human Rights, in Rhona K.M. Smith and Christan Van Den Anker (eds.), *Human Rights*, London: Hodder Arnold, 2005, p. 25

<sup>14</sup> Summary of the Convention on the Rights of the Child, *Save the Children*, United Nations UNICEF.

<sup>15</sup> Sarita Vashistha, *Crime against Children*, New Delhi: K.K. Publications, 2012, P. 207.

<sup>16</sup> *The Children Act, 1960*, Government of India: Ministry of Women and Child Development.

<sup>17</sup> Kant Mani, *Legal Definitions*, New Delhi: Kamal Publishers, 2016, p. 162.

<sup>18</sup> Prachi Jaiswal, *Child Labour: A Sociological Study*, Delhi: Shipra Publications, 2000, p. 15.

<sup>19</sup> Laura E. Berk, *Child Development*, Delhi: PHI Learning, 2013, p. 12.

<sup>20</sup> *Ibid.*, p. 12.

binding”.<sup>21</sup> Further, Rights are concerning just or unbiased treatment and fairness in judgments according to standards and codes recognized by a legitimate authority.<sup>22</sup> Besides, New International Webster’s Comprehensive Dictionary of the English Language, literally denotes the word “right” means anything done in accordance with or comfortable to truth or fact, correct, true, accurate, not mistaken, comfortable to a standard of propriety, fit, suitable.<sup>23</sup>

## CONCEPT OF CHILD RIGHTS

Children’s rights are the human rights of children with particular concentration to the rights of special defense and care provided to the young, comprising their right to apprehension with biological parents, human identity as well as the basic needs for food, worldwide state-paid education, health care and criminal laws fitting for the age and improvement of the child.<sup>24</sup> The children are subjected to work at tender age, while they require utmost love, affection, care and proper education.<sup>25</sup> But unfortunately, they are neglected, their needs are not appreciated. Parents, guardians and elders impose their ideas on them to the extent that they are ignored, ill-treated and tortured.<sup>26</sup> Children are neither the property of their parents nor they are helpless objects of charity. They are human beings and are the subject of their own rights.<sup>27</sup>

## INTERNATIONAL MECHANISM FOR THE PROTECTION OF CHILD RIGHTS

Internationally, the issues of children's rights came into limelight particularly aftermath of the World War I. A revolutionary stature was Eglantyne Jebb who had a vision to achieve and protect the rights of children worldwide. She was determined by the belief that all children whoever, they have the right to a healthy, happy and fulfilling life. She contended that “all wars were waged against children”. Her concerns led her to set up the “Save the Children Fund” in 1919 and to draft opinion that children had the greatest needs. She was the social worker from England who

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<sup>21</sup> J. A. Thompson and E.S.C. Weiner, *the Oxford English Dictionary*, Volume-III, New York: Oxford University Press, 1989, p. 922.

<sup>22</sup> Uton Muchtar Rafei, *Towards A Better Tomorrow Child Rights and Health*, WHO: South East Asian Region, 2004, P. 13.

<sup>23</sup> Thomson and Weiner, n. 21, p. 922.

<sup>24</sup> Medh Irani Dutta, *The Problems of Child Labour and Economic Policies in India*, in S. Murty, *Child Labour in India: Causes, Consequences and Cures*, Jaipur: RBSA Publishers, 2001, p.

207.

<sup>25</sup> Ravinder Pal Singh, *Human Rights and Constitutional Law: A Perspective*, Unpublished PhD work, Department of Law, GNDU, 2004, p. 13.

<sup>26</sup> Dolly Singh (ed.), *Child Rights and Social Wrongs: An Analysis of Contemporary Realities*, Volume-3, New Delhi: Kanishka Publishers, Distributors, 2001, p. 1.

<sup>27</sup> Anupama Mehta, *Child Labour: Violation of Human Rights*, in Neelima Singh and Ranjan Tripathi, *Globalisation and Human Rights in India*, New Delhi: Adhyan Publishers and Distributors, 2012, p. 223.

first started an international movement for providing the status to children.<sup>28</sup>The origins of the movement of child rights can be traced from the beginning of the Twentieth Century. Children's rights advocacy has traditionally focused on children as victims of trafficking, labour, begging, inhuman or degrading treatment, sexual harassment and so on.<sup>29</sup>

## **GENEVA DECLARATION OF THE RIGHTS OF THE CHILD,(1924)**

Declaration of the Rights of the Child pointed out that “the child, due to his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.<sup>30</sup> Initially, to abrogate the customary practice of the parents throughout the world treating children as their property was first recognized by international law through the Geneva Declaration of the Rights of the Child by the League of Nations.<sup>31</sup> The 1924 Declaration characterizes the initial human rights document adopted by the League and also acquainted with five short points, such as:

- i. The child should be specified the means binding for materially as well as spiritually development.
- ii. A child that is famished must be fed; in the case of sick ought to be nursed, backward should be helped, the antisocial child must be disciplined, and the orphan and the wander away must be sheltered and succored.
- iii. They have to be the primarily receive relief in times of distress.
- iv. They must be put in a position to earn their livelihood as well as protected against every form of exploitation.
- v. To sum up, child should bring up in the awareness that its talents must be dedicated toward the service of its fellow men.<sup>32</sup>

## **UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND, (1946)**

The creation of the UNICEF in 1946 was in response to the needs of children in the aftermath of World War II. UNICEF always protects those children who are affected by war, conflict, drought, famine or any other emergency.<sup>33</sup> During great disease campaign of the 1950s, the UNICEF proposed to vanquish common infections of early childhood using simple medical technologies. From the initial health point of view, it referred techniques such as GOBI: 'G' for growth monitoring

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<sup>28</sup> T.S.N. Sastry, *India and Human rights Reflections*, New Delhi: Concept Publishing Company, 2005, p. 198.

<sup>29</sup> Ibid., p.198.

<sup>30</sup> *Human Rights A Compilation of International Instruments*, Volume-I, United Nations Publication, 2002, p. 182.

<sup>31</sup> A.N. Roy, *Human Rights, Tasks, Duties and Functions*, Jaipur: Aavishkar Publishers, Distributors, 2007, p. 245.

<sup>32</sup> Berk, n. 19, p. 198.

<sup>33</sup> Ibid., pp. 10-11.

to keep a regular check on child well-being; 'O' for oral rehydration therapy to treat bouts of childhood diarrhea; 'B' for breast feeding as the perfect nutritional start in life; and 'I' for immunization against the six vaccine preventable childhood killers: tuberculosis, diphtheria, whooping cough, tetanus, polio and measles.<sup>34</sup> In 1965, the Noble Peace Prize won by UNICEF as nodal agency advocating the well-being of today's children determines the peace of tomorrow's world.<sup>35</sup>

## UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR), 1948

The UDHR is as a foundation for all international legal standards for children's rights today. It envisages that human beings are born free and equal in dignity and rights. They are gifted with rationale as well as conscience along with ought to act towards one another in a courage of brotherhood. It means that when children are born, they are free and each child should be treated in the same way. Children have reason and conscience.<sup>36</sup> Thereby, the General Assembly of United Nations laid down common standards for children world-wide. The concept of the equality of all human beings, as embodied in the UDHR of 1948, presupposes a certain minimum generally recognized standards in the field of the treatment to the children. The UDHR further observes that the quality of forthcoming generations will reflect the conditions of their respective childhood.<sup>37</sup>

## UN DECLARATION ON THE RIGHTS OF THE CHILD, (1959)

The motive of the 1959 UN General Assembly Declaration of the Child was to realize the ideals assumed in the UDHR regarding the child rights. It further depicted its commitment to set ideals for the rights of the disabled children and protection against neglect detrimental to the children's development. The Declaration also indicated that "The child by reason of his or her physical and mental immaturity needs special safeguards and care, including appropriate legal protection, before as well as after birth".<sup>38</sup> Moreover, it asserts that "all children, without any exception whatsoever"- regardless of race, sex, national origin, or the political or religious convictions of their parents are entitled to such rights as special protection, adequate medical care, nutrition, housing, free education and recreation, and equal "opportunities to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity."<sup>39</sup> The Declaration further proclaims that child may have a blissful childhood and get

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<sup>34</sup> Ibid., p. 15.

<sup>35</sup> Neel K. Sharda, *The Legal, Economic, and Social Status of the Indian Child*, New Delhi: National Book Organization, 1988, p. 1.

<sup>36</sup> C. Naseema, *Human Rights Education Conceptual and Pedagogical aspects*, New Delhi: Kanishka Publishers, Distributors, 2002, p. 20.

<sup>37</sup> Yuri Kolosov, *The Rights of the child*, New Delhi: Rawat Publications, 2002, p. 260.

<sup>38</sup> Levin L., *Human Rights, Questions and answers*, Paris: UNESCO, 1996, p. 245.

<sup>39</sup> M.C. Patel, R.C. Talati and S.K. Patel, *The Problems of Child Labour in India: Some Issues*, in S. Murty, *Child Labour in India: Causes, Consequences and Cures*, Jaipur: RBSA Publishers, 2001, p. 214.

pleasure from his own good and also for the good of society the rights and freedoms herein set forth.<sup>40</sup> The Declaration lays down ten principles:

- The right to equality, without distinction on account of race, color, sex, language, religion and social or national origin,
- The right to special protection for the child's physical, mental and social development.
- The right to entitled from children births a name and a nationality.
- The right to plentiful diet, housing and medical services.
- The right to offer particular schooling and treatment for physically and mentally handicapped children.
- The right to accepting love by parents as well as society.
- The right to receive free education and recreational activities.
- The right to be among the earliest to obtain security and relief in all circumstances.
- The right to be protected against all forms of neglect, cruelty and exploitation.
- The right to be brought up in a spirit of understanding, tolerance, friendship among people's peace and universal brotherhood.<sup>41</sup>

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), 1966**

In 1966, two separate treaties, covering almost entirely all the rights enshrined in the UDHR were adopted after approximately 20 years of negotiations. Former is the International Covenant on Civil and Political Rights (ICCPR); and the latter is the International Covenant on Economic, Social and Cultural Rights (ICESCR). Basically, the ICCPR was adopted by the United Nations General Assembly on 16 December, 1966 and entered into force in 1976, almost a decade after their adoption. The ICCPR ensures the protection of civil and political rights. Article 2, guarantees to all individuals (including children) those rights which are enshrined in the ICCPR and asks that all these rights should be respected and ensured without distinction of any such kind of race, color, sex, language, political or other opinion. In all the above provisions, the major focus has been given to the dignity of humankind. Article 24 of the ICCPR worked as a major lifeline of the children and it envisages the right of every child, on the basis of their status as a minor, to measures of protection on the part of their family, society and state without discrimination.<sup>42</sup> More particularly, "the Covenant prohibits slavery, guarantees the right to a fair trial and protects person against arbitrary arrest or detention. It recognizes freedom of thought, conscience and religion: freedom of

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<sup>40</sup> Ibid., p. 337.

<sup>41</sup> Declaration of the Right of the Child (1959), Resolution 1386, (XIV)

<sup>42</sup> United Nations International Covenant on Civil and Political Rights 17 June, 1996.

opinion and expression; the right of peaceful assembly and of emigration; and freedom of association”.<sup>43</sup>

## **INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR), 1966**

The ICESCR envisages that all human rights are interlinked so far as the dignity of human beings is concerned. Under Article 10 of the covenant, the states should recognize the family as the ‘innate and fundamental group unit of society’, which requires the widest possible protection and assistance. Apart from this, the ICESCR also lays the foundation of some inherent rights of the mothers such as the special protection of mothers before and after childbirth and the special protection and assistance to be given to children, in particular to avoid economic and social exploitation, comprise labour, which is injurious to their morals or health or dangerous to life.<sup>44</sup> Further, it recognizes everyone’s right to work, to fair wages, to social security, to adequate standard of living and freedom from hunger, and to health and education. It also undertakes to ensure the right of each person to outline and unite trade unions.”<sup>45</sup>

## **UN CONVENTION ON THE RIGHTS OF THE CHILD, (1989)**

The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General assembly in 1959 and recognized in the UDHR, in the ICCPR (particular in articles 23 and 24), in the ICESCR (particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the effort to define and specify the “special care and assistance” to which children are entitled.<sup>46</sup> The Convention was adopted and opened for signature, ratification and accession by the General Assembly resolution 44/25 of 20 November 1984. It came into force on 2 September, 1990. It has been ratified by 191 countries except the USA and Somalia.<sup>47</sup> The Convention consists of 54 Articles, initial 41 deals with substantive issues and the remaining 13 with the procedural matters. These core articles are much broader in the sense and thereby covering all the aspects of human rights i.e. civil, cultural, economic, political and social.<sup>48</sup>

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<sup>43</sup> S.S. Kohli, *A Conceptual Encyclopaedia Of Guru Granth Sahib*, New Delhi: Manohar Publishers and Distributors, 1992, p. 9.

<sup>44</sup> AshaBajpai, *Child Rights in India: Law, Policy and Practice*, Second Edition, New Delhi: Oxford University Press, 2006, p. 208.

<sup>45</sup> Balbir Chand Longowal, *the State and Violations of Human Rights in India*, Longowal: Malwa History Research Centre, 2003, p. 44.

<sup>46</sup> Satish Kanitkar, *International Provisions of Human Rights*, Delhi: Rajat Publications, 2000, p. 113.

<sup>47</sup> UNICEF, Report, 2012.

<sup>48</sup> Berk, n. 19, p. 243.

Thus, the Convention on the Rights of the Child has the same meaning for people in the entire world. There are four general principles enshrined in the convention particularly, Articles 2, 3, 6 and 12. These are meant to help with the interpretation of the Convention as whole.

**Non Discrimination (Art. 2):** It must be ensured that every child fully enjoys rights, “irrespective of the child’s or his or her parents or legal guardian’s race , color, sex, language, religion, political or other opinion, national ethnic or social origin, property, disability, birth or other status”.<sup>49</sup> There must be equality of opportunity for boys as well as girls. Moreover, refugee children, children of foreign origin, children of indigenous or minority groups should have the same rights as enjoyed by others.

**Best Interest of the Child (Art. 3):** It should be necessary for the authorities of the state to take decision regarding children, prior to consideration the best interest of the child. This decision relates to decision by courts of law, administrative authorities, legislative bodies and both public and private social welfare institutions.<sup>50</sup>

**The Right to Life, Survival and Development (Art. 6):** These rights should be ensured to the as maximum extent as possible. The term development does not only cover physical health, but it also includes mental, emotional, cognitive, social and cultural development.

**Right to Express Opinion (Art. 12):** Children should be free to have opinions in all matters affecting them and these views should be given due burden in accordance with the age and maturity of the child.<sup>51</sup>

## CHARTER ON THE RIGHTS OF THE CHILD

Realizing its obligation to protect and promote the rights of the children, the UN further decided to draft a Charter on the Right of Child. It was adopted unanimously at a plenary session of the UN General Assembly on November 20, 1950. The Charter grants ten basic rights to the children. In order to promote and create awareness across the globe about the importance the rights of the children, the year 1979 was declared as the International Year of Child by the United Nations. Additionally, a whole decade was dedicated to the improvement of children from neglect, destitution and deprivation.<sup>52</sup> In general, the provisions of the Charter are committed to the four main areas of child rights, i.e. survival, development,

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<sup>49</sup> James Vdackumchery, *U.N. Universal Declaration of Human Rights and Criminal Justice*, New Delhi: Concept Publishing Company, 2012, p. 197.

<sup>51</sup> Ibid., pp. 197-198.

<sup>52</sup> Singh, n. 26, p. 245.

protection and participation.<sup>53</sup> The interpretation of these four ideals as given by the Charter on the Rights of the Child has been discussed briefly:

1. The Right to Survival - It involves the right to life, maximum achievable standard of health, nutrition, and sufficient standards of living. It also contains the right to get a name as a social identity and a nationality to pursue.
2. The Right to Protection - It encompass the freedom from all forms of exploitation, ill-treatment, brutal or degrading treatment, and special safeguard in the situations of emergency as well as the armed conflicts.<sup>54</sup>
3. The Right to Development- It asserts the right to the free and easy access to information, cultural activities, and chances for relax, have fun and leisure along with the right to freedom of thoughts, sense of right and wrong and faith.
4. The Right to Participation - It take account of respect for the ideas and viewpoints of the child, freedom of the child to participate in the social, cultural and religious aspects of the society.<sup>55</sup>

## **OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY, (2000)**

The intention of the Convention was to undertake appropriate measures in order to guarantee the protection of the children from their procurement, child prostitution and child pornography. The Optional Protocol affirms that there is need to increase the protection of children from economic exploitation and performing any work that is likely to be hazardous or to hamper child's education, harmful to child's health or physical, mental, spiritual, moral as well as social development. The protocol also considers that these evils can be wiped out through holistic facilitated approach eradicating, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, reckless adult sexual behaviour, armed conflict and trafficking in children etc.<sup>56</sup>

## **OPTIONAL PROTOCOL OF CHILDREN IN ARMED CONFLICT, (2000)**

This Protocol mainly concerns the best interests of the children in all actions such as, nurturing the age eighteen years for recruiting as soldiers into armed forces and also their participation in hostilities. Further, Protocol condemns targeting the

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<sup>53</sup> Sastry, n. 28, p. 20.

<sup>54</sup> Arvind Kumar, *Fundamental of Child Rights: Concepts, Issues and Challenges*, Volume-2, New Delhi: Anmol Publications, 2002, pp. 399-400.

<sup>55</sup> Government of India, *Children in India 2012: A statistical Appraisal*, Ministry of Statistics and Programme Implantation, 2012, p. 21.

<sup>56</sup> *United Nations, Human Rights A Compilation of International Instruments*, Volume-I, Bookwell, 2002, pp. 200-201.

children in situations of armed conflict and direct attacks on places generally having a significant presence of children such as schools and hospitals, which are protected under the international law.<sup>57</sup> The 26<sup>th</sup> International Conference of Red Cross in December 1995 also recommends taking every feasible step to ensure that children below the age of 18 years do not take part in armed conflict. This is important tool for promoting children's rights both domestically and internationally.<sup>58</sup>

## CRIMES AGAINST CHILDREN

The children are assumed to go to school, get fresh and healthy milieu, decent care of parents or guardians, nutrient diet, and complete favorable environment for their multifaceted development but not even a single day passes without a disreputable abuse of children across the globe. It is a tragedy for children to indulge them into work at their tender age, when they need utmost love and affection which amounts to squeezing the bud before its blooms. In fact, the problem of crime against children has acquired a severe enormity. They have been murdered, kidnapped, sexually harassed, raped, sold and brought for flesh trade, girls forcefully indulged into prostitution as well as the male children are indulged into begging or smuggling of drugs.<sup>59</sup> In addition, children are victims of drought, famine, diseases, sale of organs. Further, they are also sold to vagabonds to be turned into beggars, camel riders, domestic servants and hazardous jobs such as stone quarrying, fire work units, match factories, carpet weaving, glass bangle making, plastic and rope weaving, salt extraction, making steel rolling, diamond cutting and construction industries etc. Therefore, the protection of child rights needs a launch of a nation-wide campaign at the grass-root level. The common masses should be awakened, the civil society is to be trained, and the governmental agencies are required to be more vigilant to make the epitome of child rights a reality in India.<sup>60</sup>

Apart from this, the primary rights to the children are denied not because of any distort social system or lack of the bonds of love and affection from those who have brought them into this world, but due to the hunger, poverty, malnutrition and large scale unemployed as well. Majority of these unwanted children are born out of sexual needs of the parents who lack any scientific knowledge of family planning.<sup>61</sup>

## CHILD ABUSE: WORLD WIDE SCENARIO

Children are extremely vulnerable and defenseless; therefore, it is required that no excuse is possible for mistreating them. Mostly, this occurs when other adults overlook the evidence or when children victims of abuse do not complain just

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<sup>57</sup> Ibid., pp. 200-208.

<sup>58</sup> U.N. Gupta, *Human Rights*, Volume-I, New Delhi: Atlantic Publishers, 2006, p. 267.

<sup>59</sup> Savita Bhakhry, *Children in India and Their Rights*, New Delhi: NHRC, 2006, p. 14.

<sup>60</sup> K.P. Saksena (ed.), *Human Rights Fifty Years of India's Independence*, New Delhi: Gyan Publishing House, 1999, p. 80.

<sup>61</sup> Ibid., p. 80

because of the shame or fear of retaliation.<sup>62</sup> Child abuse is one of the worst, hidden and invisible crimes of the civilized society.<sup>63</sup> It may also be called cruelty towards children, the willful and unjustifiable infliction of pain and suffering on children. The term "child abuse is used when children received serious physical injury cause willfully rather than accidents." Minor girls are brought to cities for sex abuse and prostitution. Moreover, the innocent children are born out of the sexual urges of the poor and end up in satisfying the sexual urges of the rich.<sup>64</sup>

According to Burgess, "child abuse is obvious when any child who receives non-accidental physical and psychological injury as a result of acts and omissions on the part of his parents, guardians impairment of their physical, mental, psychological development, disability or death".<sup>65</sup>

Human Touch Bureau Report (2004) defines 'child abuse' as causing or permitting any harmful or offensive contact with a child's body, and any communication or transaction of any kind which humiliates shames or frightens the child. Some child development experts go a bit further and define child abuse as any act or omission, which fails to nurture or in the upbringing of the children.<sup>66</sup>

## Types of Child Abuse

**Physical Abuse:** It may include hitting, punching, shaking or beating a child, even if the perpetrator did not intend to cause injury.<sup>67</sup> Mostly, the physical abuse of children takes place in families when parents or other family members physically injure or inflict serious physical pain on the child. It includes hitting with hands or fists, hitting with objects (wooden, plastic, or metallic objects), burning, shaking infants, stabbing etc. Physical abuse in schools also referred to as 'corporal punishment', is the deliberate infliction of pain intended to change a child's behaviour. A child who faces severe forms of physical abuse during childhood is likely to group as physically and psychologically underdeveloped human being in future.<sup>68</sup> Children are not in position to protect themselves against the abuses inflicted on them by their family members, relatives or the unknown, due to their immaturity, vulnerability, dependence and their physical and mental inferiority.<sup>69</sup>

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<sup>62</sup> *Compton's by Britannica, Volume-4*, USA: Encyclopedia Britannica Inc., 2008, p. 317.

<sup>63</sup> D.C. Nanjunda, *Child Labour Human Rights: A perspective*, Delhi: Kalpaz Publications 2008, pp. 20-21.

<sup>64</sup> Government of India, *Children in India 2012: A statistical Appraisal*, Ministry of Statistics and Programme Implantation, 2012, p. 80.

<sup>65</sup> Ram Ahuja, *Social Problems in India*, Jaipur: Rawat Publications, 2013, p. 219.

<sup>66</sup> Rama Achyut Pande, *Sexual Abus of Girl Children, Some Hidden Facts*, New Delhi: Rawat Publications, 2016, p. 12.

<sup>67</sup> *The Encyclopedia Americana*, Vol.14, U.S.A: Grolier Incorporated, 1999, p. 317

<sup>68</sup> Nilima Mehta, *Child Protection and Juvenile Justice System*, Childline India Foundation, 2008, p. 49.

<sup>69</sup> *Ibid.*, p. 51.

**Emotional Abuse:** It may include unjustified verbal abuse such as calling a child stupid, ugly or unwanted. Moreover, discipline that causes severe mental trauma like keeping a child locked up in a closet.<sup>70</sup> Beside this, emotional abuse of the child can be defined as a pattern of behaviour that hinders the emotional development of a child or negatively influences his sense of the self. Emotional maltreatment is rarely manifested in the physical signs. Four important causes of emotional abuses are frequent, i.e. poverty, deficient parental care and non-cordial relations within family, maltreatment faced by parents during their childhood and alcoholism of parents.<sup>71</sup>

**Child Sex Abuse:** Child sex abuse has been defined as “the involvement of dependent and immature children in sexual activities which they do not fully comprehend, to which they are unable to give informed consent.”<sup>72</sup> In other words, child rape and child prostitution is another dimension of violation of child rights.<sup>73</sup> In the case of rape, particularly the sexual assault on children, it is the psychology of child to obey the order of the rapist if he is her custodian; may be father, uncle, teacher or warden. There are many reasons for children not disclosing the fact of sexual abuse to their relatives or friends. One of the reasons is the threat and another in many cases, their dependence on the person who sexually abuses them.<sup>74</sup>

**Neglect:** includes failure to provide proper shelters, nourishment, medical treatment or emotional support.<sup>75</sup> Actually, child neglect is an act of blunder leading to the refutation of a child’s basic wants. Further, neglect can be physical, educational, emotional or psychological. In the context of physical neglect, it entails denial of food, clothing, appropriate medical care, supervision or proper weather protection. Additionally, abandonment may also be incorporated. In the case of educational neglect, it encloses failure to provide appropriate schooling or special educational needs. Whereas, psychological neglect contains the lack of emotional support and love.<sup>76</sup>

## Conclusion

The study reveals that the contemporary universally recognized framework of child rights has developed during the centuries’ old process of the origin and development of the term. Earlier developed in various societies as specifically domestic ideals, it started getting regional attention and recognition during the late nineteenth century.

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<sup>70</sup> K.P. Saksena (ed.), *Human Rights Fifty Years of India’s Independence*, New Delhi: Gyan Publishing House, 1999, p. 317

<sup>71</sup> *United Nations, Human Rights A Compilation of International Instruments*, Volume-I, Bookwell, 2002, p. 64.

<sup>72</sup> Bhakhry, n. 59, p. 220.

<sup>73</sup> Kamalaxi G. Tadsad and Harish Ramaswamy, *Human Rights and Police Administration*, New Delhi: Concept Publishing Company, 2012, p. 129.

<sup>74</sup> R. Chakraborty, *Anti-Human Trafficking Laws*, New Delhi: Kamal Publishers, 2015, p. 32.

<sup>75</sup> Nanjunda, n. 63, p. 317

<sup>76</sup> Shweta, *Child Rights in India Law, Policy and Practice*, New Delhi: Arise Publishers and Distributors, 2012, p. 183.

The era of twentieth century can be recognized as the development of the concept of child rights as an international discourse. The establishment and dominance of the United Nations has contributed significantly in design and implementation of the international framework of child rights. In present times, all civilized countries, irrespective of their geo-regional identities and political-ideological commitments, willingly acknowledge the international framework of child rights recognized by the United Nations.