

PERPETRATORS OR VICTIMS: A CASE STUDY OF CHILD COMBATANTS OF ARMED CONFLICT IN INDIA*

I. Introduction

A child is a 'supremely important asset'¹. Every child is an asset of the nation. The welfare of the entire nation depends on the well-being of its children who are the future bearers of progress and development. Development of an individual is correlated to social peace and harmony and corresponding legal system to enhance and enforce the same. When law and order deteriorates, welfare of children and women are at stake. Recognizing the welfare of this vulnerable section of the society, the framers of the Indian Constitution incorporated various provisions under Part III and IV in consonance with the Universal Declaration of the Rights of Man.

Rights of Man as Universal agenda got formulation for the first time in the Universal Declaration of Human Rights in the year 1948. The Universal Declaration of Human Rights (1948), The International Covenant on Civil and Political Rights (1966), The International Covenant on Economic, Social and Cultural Rights (1966) and the Optional Protocol to these Covenants together constitute the International Bill of Human Rights. These instruments firmly recognize the "inherent dignity and inalienable rights of every member of the human family as the basis for laying the foundation of freedom, justice and peace in the world."² Though not comprehensive, these instruments did lay down welfare provisions for children.

The Universal Declaration of Human Rights states in Article 25 that "childhood is entitled to special care and assistance"³. According to Article 10(3) of the International Covenant on Economic, Social and Cultural Rights (1966), State parties should recognize that, "Special measures of protection and assistance should be taken on behalf of all children and young people without any discrimination for reasons of parentage or other conditions."⁴ According to Article 24(1) of the International Covenant on Civil and Political Rights (1966), "Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State."⁵ Hence the International Bill of Rights did provide for the rights of children in conformity with their Preamble, but these were not comprehensive. The Convention on the Rights of the Child (1989) is the first globally binding treaty for the protection of Children's civil, political economic, social and cultural rights.⁶ The Convention prescribes that, 'a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.'⁷

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II. Objective

Children are worst affected by conflicts whether armed or not. India is home to several terror groups which have been officially banned by the Government under the Unlawful Activities Prevention Act, 1967. The terror groups indulge in combats against forces of the State. To swell their ranks they often resort to recruitment of children's which has become an area of concern. The main objective of this study is to analyze situations under which a child may be compelled to join non-state forces and by so doing whether they perpetrate or are victims of lack of informed consent. The study also aims to present the factors which facilitated the adoption of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. For analyzing the reason for recruitment of children in armed conflict, the meaning of 'armed conflict' is briefly discussed.

III. Methodology

The study is doctrinal conducted mainly through the analysis of available reports, data, legislations etc. The descriptive study is based on perusal of secondary data which includes books, journals, newspapers etc. To peruse scholarly discourse on the subject aid of secondary source has been taken. Internet as source of information has also been used.

IV. The Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict

With growing incidents of armed conflict over the globe, children and their security became a question of concern. The Geneva Convention of 1949 did not lay down any provision for the involvement of children in armed conflict. Additional Protocol I to the Geneva Convention adopted in 1977 provided under Article 77 Para I that the parties to the conflict shall take all feasible measures in order that children who have not attained the age of 15 years do not take direct part in hostilities and in particular they shall refrain from recruiting them into their armed forces.⁸

During the armed conflicts of 1980's and 1990's, there were about 300,000 underage people actively involved in armed conflict. From the start of the new millennium these figure have slightly reduced to 250,000, but there have been all times and in all places children's involved in armed conflict. Child involved in armed conflict is referred not only to those who have carried guns but as including those who are involved in various capacities such as spying, runner guards, cooks etc..Several risk factors make young people vulnerable to conscription or voluntary involvement like poverty, family separation or living in war zones. Sometimes personal factors such as capacity to endure risk or revenge motive motivate employment in armed conflict.⁹

According to a UNICEF Report in 1996, due to armed conflict about two million children were killed, four to five million disabled, twelve million left homeless, more than one million orphaned or separated from their parents, some ten million psychologically traumatized.¹⁰

Impact of armed conflict on children raised alarm among the International community.

The Machel Report submitted in 1993 provided a clear and complete picture of how children are the worst victims and urged the United Nations to take concrete action. As a result a number of important measures were undertaken by the Security Council since 1999 including

the Optional Protocol to the involvement of Children in armed Conflict which was approved in 2000. The Protocol emphasize on State parties to ensure that children below 18 years of age are not engaged in armed forces of the State or non-State. The Optional Protocol on the Involvement of Children in Armed Conflict was ratified by India on 30 November 2005 and is in effect since 30 December 2005. The report on the status of implementation of the Optional Protocol was submitted by the nodal ministry, Ministry of Women and Child Development, India, in the year 2011.

In the report, Ministry of Women and Child Development denies the presence of International or Non-International armed conflict in India¹¹ which is in contrast to the annual report submitted by the Ministry of Home Affairs and the Ministry of Defence. Reports of non-governmental organization also reveal a different picture. The Asian Centre for Human Rights has for the first time prepared a comprehensive report on the recruitment of child soldiers by various State and Non-State forces in 2013. As for recruitment in Non-State forces, the recruitment is usually forceful. Whether voluntary or forceful, the fact remains that there are recruitments of children in various capacities.

V. 'Armed conflict':

The Optional Protocol used the term "armed conflict" but it is not defined in the instrument. In fact 'War' or more commonly used term 'armed conflict' though repeated in several international instruments, is nowhere defined. In 2005 the Executive Committee of the International Law Association (ILA) approved a mandate of the Use of Force Committee to produce a report on the meaning of war or armed conflict in International law in order to support the proper application of Human Rights Law.¹² The report was approved in 2008. The Committee found that armed conflict has some minimal defining characteristics that distinguish it from non-armed conflict. According to the Committee all armed conflict has the two minimal characteristics:

1. The existence of organized armed groups;¹³
2. Engaged in fighting of some intensity.¹⁴

Violence must be organized and intense. Intense violence implies engagement of state armed forces with non-State forces lasting for a considerable duration (duration of thirty hours in a combat in Argentina was considered as armed conflict) resulting in casualties and property destruction. Intensity of violence is measured by taking into account several factors such as duration and gravity of the armed clashes, types of government forces involved, types of weapon used and extent of the damage caused by fighting. The non-state actors/ militant to be engaged in armed conflict must be organized implying possessing a command structure, training, recruiting ability, communications and logistical ability.¹⁵

Armed conflict may be national or international. In International armed conflict armed forces of two States are involved, where as in Non-International armed conflict at least one of the two opposing sides is a non-State armed group. International Humanitarian Laws applies to both International and Non-International armed groups.¹⁶

"Militant or terrorist groups are often criminal organizations, armed opposition groups. India is home to large number of armed opposition groups of which 35 remains banned under the Unlawful Activities Prevention Act, 196"¹⁷.

Armed conflict in India can be slotted into three major regions:

- a) The Maoist and security forces conflict concentrated in the tribal belts of Andhra Pradesh, Chhattisgarh, Odisha, Jharkhand and Bihar;
- b) The Jammu and Kashmir conflict zone;
- c) The conflict areas of North Eastern states comprising the states of Assam, Tripura, Nagaland and Manipur.¹⁸

Recently the conflict has spread over to other neighboring states of those already affected, thereby affecting major part of the country. Armed conflicts results in severe human rights violations. "Rights are violated both by the State forces and Non-State armed forces."¹⁹ Inability of the government to resolve political problems using the democratic means has encouraged the growth of many armed opposition groups. In conflicts between the State and non-State forces in internal armed conflicts, women and children suffer severe human rights abuses. The employment of children by armed opposition groups have surfaced as the worst threat to their well-being. Though rights activists legitimately criticize State forces of rights violations, they do not have international legal mandate to condemn non-state actors.

VI. Recruitment of Child Soldiers (Armed Opposition Group).

Article 4 of the Optional Protocol states that, "4(1) Armed group that are distinct from the armed forces of the State should not under any circumstances, recruit or use in hostilities persons under the age of 18 years"²⁰.

The Protocol clearly prohibits recruitment of children by armed opposition groups under any circumstance. But reality on the ground reveals rampant recruitment of child soldiers, whether forceful or voluntary, by the opposition groups in violation of the Protocol in India. "There is no official estimate of the exact number of such child soldiers, but it is believed that there are at least 3000 child soldiers of which 500 are in North East and Jammu and Kashmir and 2500 in the Left Wing Affected areas in the conflict. It was reported that in 2013, there were 4000 child cadres employed by Naxalites, including girls to strengthen their base. They were recruited for gathering information about the movements of security forces, collect rations, and as couriers"²¹ In Assam many children are forced to join the non-state forces at very early age. Studies have revealed that a new phenomenon is that new factions emerge on disagreement with the older factions and to swell their ranks recruit cadres irrespective of age and sex. North East Research and Social Networking, an NGO, have interviewed many child combats in North East (Assam and Manipur) on condition of anonymity and laid down their narratives which throw ample light on the fact that there are child combatants and many circumstances which fuel their engagement to tasks unsuited to their age. The case studies below are of youths from Assam.²²

VII. Case study:

The case of Sushil (name changed).²³

Sushil is 19 years old now. He was lured into insurgency when he was 16 years old. He hails from a very poor family living on the daily wage of his parents. He has four sisters. After passing class X with good marks, he could not afford to join college, unlike his friends. He was depressed. At that time one of the members of insurgency, who was known to him, approached him. The person briefed him about the mission of the group and lured him to the prospect of earning. He instantly decided to join the group and is now a renowned member of the group. Initially he was tasked with assisting seniors and rigorous training, than he was enrolled to combat. He says he is happy with his position. He believes he is furthering a social cause.²⁴

Terrorist activities are a condemnable task at all levels of national and international laws. It is difficult to grasp the reason of persons who engage in terrorism, more so when the person is

minor, lacking sufficient knowledge to make informed decision. The Convention on the Rights of the Child, grant participatory decision making right to a child. “Whether minors are decision makers or not is a complex jurisprudential and philosophical question and there is much theorizing about it. There arises questions that even if minors are given the right to decide, it might lead to decision against parents. Hence children’s right to decide must be limited especially when decisions are apt to change course of life”.²⁵ Decisions of children affecting the social norms deconstructs their notion of sanctity.

Although by reason of age, certain unlawful acts of children are dealt less severely, nevertheless, they are held accountable. “International law requires that minors should be treated in fashion that focuses on their rehabilitation and reintegration, and accounts for their relative vulnerability and culpability.”²⁶ “International Criminal Court indicts person for recruiting child soldiers and not the child soldiers themselves. The focus is on the person recruiting and not the child soldier”.²⁷

Section 82 and 83 of the Indian Penal Code are exemption clauses. While Section 82 exempts children under seven years of age from all kind of criminal liability, section 83 exempts children who is above seven but below twelve years of age and have not yet attained sufficient maturity of understanding.

Both the sections exempt children under twelve years of age who have not attained sufficient maturity of understanding. The Juvenile Justice Care and Protection of Children Act, 1986 was amended in 2000 to provide 18 years as the age of juveniles for both male and females. Hence, an act committed by person above 12 years of age but below 18 years with maturity in understanding is not specifically exempted by the Penal Code, though protected by the Juvenile Justice Act. Maturity of understanding may be inferred from the subsequent conduct of the accused. Although initial consent was not informed, or assisted by several factors, subsequent act of the youth combat reveals sufficient knowledge. “Under Section 20 of the Prevention Of Terrorist Activities Act 2002, a person commits an offence if he belongs or professes to belong to an organization which is declared as terrorist organization.”²⁸

Various factors move a minor towards acts which are unlawful. An unlawful organization which threatens the sovereignty and integrity of India is treated as illegal organization under the Unlawful Activities Prevention Act, 1967. The Preamble to the Constitution affirms the sovereign and democratic character of the nation. And it is the duty of every citizen to refrain from acts imposing threat to this character. Under Article 19(6) State can impose reasonable restriction in public interest on the profession, occupation, business or trade of a person. Article 39(e) directs State to ensure that ‘the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength’²⁹. The narrative of the combatant reveals failure of the government to guarantee economic security which compels children to enter avocations unsuited to their age. The name of person or organization is not revealed for reason of security. The youth therefore faces threat from the organization as well as security forces of the state. It is a violation of his freedom of speech and expression under Article 19(1) of the Constitution as well as right to life and liberty under Article 21. Hence, the profession which is dangerous or against public interest is not the mandate of the Supreme law.

The case of Bijon(name changed)³⁰

Bijon has surrendered in 2010. He joined insurgency in 2004 when he was 16 years old. His only motive was to earn money, and was hardly aware about the ideologies, roles, responsibilities and goal of the party. After receiving training, he began facing threats from

armed forces of the State. He lost many of his friends in the conflicts in front of his eyes. During search operations, they had to hide in forests and survive on minimum necessities. First aid was hardly available. He could not meet his family for months. He was very depressed. He finally managed to escape and surrendered.³¹

The case of Bijon bears similarity with Sushil so far as motive for engagement is concerned. Their aim to earn money reveals economic necessity and consequently liberation from want. But so far reintegration is concerned; the first case is reluctant while the second case is amenable.

The narrative reveals objective fulfillment rather than subjective authority, because he was unaware of the motive, ideology or objective of the insurgent group, his only concern was employment in lieu of money. The minor lacked vision to take the right decision, but with age he realized the value of socialization. The youth managed to escape and surrender before the security forces.

“The armed opposition group who emerge out of frustration in fulfillment of various demands by the State, exercise substantive control over the lives of the citizens and abuse the physical integrity, the right to freedom of expression and conscience of the people in the areas of their operation.”³² The activities of armed opposition groups have become indistinguishable from criminal activities as they engage in various crimes such as theft, extortion etc. As a consequence of this activities, endemic crime and a general breakdown of law and order has occurred which cause severe human rights violation.

Various factors influence children's to pursue insurgency. Research in the field has revealed that ‘conflict refuels conflict, making it a vicious cycle. Many children join armed group due to frustration generated out of conflict. Rehabilitation programmes of the government are not implemented effectively which force people to take up arms in order to promote their interest. In the process, children are exploited, abused and neglected. Narrative of eminent personalities of the conflict areas reveals how violence after violence affect children, who finds it difficult to cope with anger, frustration and fear and finally approach the platform of insurgency to express their emotions.’³³

VIII. Conclusion:

India has the largest child population in the world³⁴. The number of children under 18 years which was 428 million in 2001 and rose to 430 million in 2006 is expected to rise above 400 million in the coming decade.³⁵ The government has undertaken several measures aimed at the ‘protecting and promoting’ child rights in the country since the adoption of the Convention on the Rights of Child³⁶. Article 21 A was inserted in the Constitution in the year 2002 to provide elementary education free and compulsory for all children in the age group 6 to 14 years³⁷. Ministry of Women and Child development was made an independent body in 2006. The National Commission for Protection of Child Rights which was constituted in 2007 is assigned with the responsibility to ensure that all laws, measures, policies and administrative decisions taken by the government are in consonance with the rights of the child as put forward in the Constitution and CRC. Assam has established its own state Commission. Apart from these, the National Institute of Open Schooling, Vocation Education and Training, National Skill Development Mission are functioning to provide vocational education to persons of 19-24 years.

But still there are reports of children being recruited into unwanted avocation. Young people associate with fighting in various capacities, social exclusion and marginalization have an overwhelming impact on involvement of young people into fighting forces. Sometimes they

are forcibly recruited by the armed groups to swell their ranks. Sometimes children do join armed groups voluntarily. Recruitment whether voluntary or forced has legal and practical implications. And this must be brought to light in the society.

If young members join these groups for some reason or other and these reasons are not addressed, then there is possibility that they may join again. So the State must take adequate measures to address this problem. Being delicate and immature to realize pros and cons, young people even though recruited forcefully are made loyal and obedient. They are awarded various roles such as spying, manning check points, engaging in active combats and providing domestic and sexual services. Awareness among the people about the government schemes and their proper implementation can curb the menace of child soldiers in India.

Hence it may be concluded that since various factors influence children to engage in avocations not suited to their age in violation of the provision of the Constitution and other laws of the land, they must not be considered as perpetrators straightway. Each case must be decided on its merit according to the procedure established by law. Rule of law and democracy are the basic feature of the Constitution and democracy has no place for terrorism.

Endnote:

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