

"JUSTICE DENIED & JUSTICE DELAYED" - EFFICIENCY OF THE CONTEMPORARY LEGAL SYSTEM IN INDIA

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Abstract

Justice concerns everyone and nobody should be deprived of it. As Rawls said there can be distributive justice only when you strip your identities while formulating legal rules. This paper is influenced by his theory and pin points some of the most common problems faced by the children of the Indian society. It discusses the evolution of the legal system in India since its independence and how the efficiency of the legal system varies in relation to different issues regarding children. Lastly the paper will provide reasons for the downfall of the legal system, ways how it can be reduced and recommendations for the development of child rights.

Keywords: *Justice, Children, Rights, Legal system, India, Efficiency of child rights*

JEL Classification: [K1, K10]

1. Introduction

*"Every young boy or girl in his or her heart of hearts craves for recognition and love and he or she becomes the devoted slave of anyone who shows him or her kindness and consideration."
Rabindranath Tagore*

Long ago, countries basically had no concern for children and their rights. It is pertinent to mention the abuses of the factory system in England, where a child labour force would be recruited and made to work for long hours from the age of eight years. Very often the children while working at the machines for a long time used to sleep and get rolled into them along with cotton bales.¹ Child rights are not only important for children alone, but for the society and nation at large. Their aspirations and likings were usually sidelined even in matters directly concerning them.² Children's rights are the human rights of children with particular attention to the rights of special protection and care afforded to minors.³ The United Nations Convention on the Rights of the Child (UNCRC) provides certain rights which are necessary for the development of the children and therefore are hard-lined.

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¹ In the Administration for Child Welfare, Kakabadse (1979 :67).

² Chopra, G., 2015. *Child Rights in India Challenges and Social Action*. 1st ed. New Delhi: Springer.

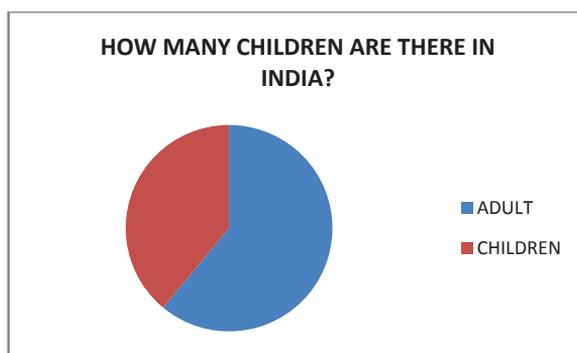
³ ANON., 2017. *A Safe Childhood is a Human Right* [viewed 11 March 2017]. Available from: <http://www.amnestyusa.org/our-work/issues/children-s-rights?id=1011016&n1=3&n2=78>.

1.1. Who is a child?

Definition of a child has always been a constant debate. India with 1.21 billion people constitutes as the second most populous country in the world, while children represents 39% of total population of the country.⁴ Different legislations define child differently. The Census of India considers children to be any person below the age of 14, as do most government programmes. Biologically childhood is the stage between infancy and adulthood.⁵ The Indian Penal Code (IPC) 1860 finds that no child below the age of seven may be held criminally responsible for an action (Sec 82 IPC).⁶ Art. 45 states that the state should provide early childhood care and education to all children below the age of six.⁷ The Child Labour (Prohibition and Regulation) Act, 1986 defines a child as a person who has not completed fourteen years of age. The Factories Act, 1948⁸ and Plantation Labour Act 1951⁹ states that a child is one that has not completed fifteen years of age and an adolescent is one who has completed fifteen years of age but has not completed eighteen years of age. The Juvenile Justice (Care and Protection of Children) Act, 2000 has modified the definition of child to any person who has not completed eighteen years of age.

Because of its comprehensive clauses and it being the latest law to be implemented regarding child rights and protection, many are of the opinion that the definition of child found in the Juvenile Justice Act, 2000 should be considered the legal definition for a child in all matters.¹⁰

Figure 1



⁴ ANON., 2017. *Census of India : Provisional Population Tables : India : Census 2011* [viewed 15 March 2017]. Available from: http://censusindia.gov.in/2011-prov-results/prov_rep_tables.html.

⁵ A NON., 2017. *Child Rights in India. Child in India Statistics and Children in India* [viewed 15 March 2017]. Available from: <http://www.childlineindia.org.in/child-in-india.htm>

⁶ *Sec 82 Indian Penal Code, 1860.*

⁷ Art. 45, Constitution of India, 1950.

⁸ *Factories Act, 1948.*

⁹ *Plantation Labour Act, 1951*

¹⁰ *Ibidem* 6.

2. Child rights

Black's Law Dictionary defines Right as "Something that is due to a person by just claim, legal guarantee, or moral principle." The evolution of human rights have given rise to child rights. It was only during the 1970s and 1980s that the concept of child rights emerged.¹¹

According to the United Nations Convention on the Rights of the Children that India ratified in 1992 all children are born with fundamental rights and following are the rights enshrined in the Convention:

- Right to Survival – to life, health, nutrition, name, nationality
- Right to Development – to education, care, leisure, recreation, cultural activities
- Right to Protection – from exploitation, abuse, neglect
- Right to Participation – to expression, information, thought, religion.

Therefore, the upshot is that it is absolutely necessary to invest in the young generation for their upliftment and development so they can contribute to the socio-economic growth of the country as well as the world. Most studies outlining the actual status of child rights in India have been scanty and not suitably comprehensive. The different government schemes and programmes like Early Childhood Care and Education (ECCE), Integrated Child Development Services, National Rural Health Mission, Rajiv Gandhi Creche Scheme, Sarva Shiksha Abhiyan, Right to Education and more recently, Beti Bachao Beti Padhao Abhiyan have not been able to adequately address the issue.¹² Most of the children don't have knowledge about what kind of rights they are entitled to and therefore it's the responsibility of the society to safeguard their rights and protect them from any kind of abuse.

2.1. *Difference between Child Rights and Child Protection*

For a better understanding of the children's issues, it is important to understand the difference between these two concepts. Child rights are a value orientation or ideals. They are entitlements and justifiable, but they are not tangible. Protection is one of these rights. Though Child Protection is more than a right; It is a framework or system by which the rights of a child can come to be. Consisting of various duty bearers such as the departments of the government, police, school, civil society, who all have roles to play to ensure that a child's rights are met, and in the case that a child's rights are violated that the violator be brought to justice and care be provided to the child. It is not only a treatment but a preventive measure to be taken up by the society.

Through Child protection all the other rights of a child can be upheld. For example a child has a right to live a normal childhood in a family environment. The first step towards it would be to ensure that families are able to survive by

¹¹ Supra N 3.

¹² Supra N 3.

providing them with minimum wealth, education and other basic amenities. The second step is to address the needs of the children. The framework includes the mechanisms to relocate these children into caring families either through adoption or foster care and provide these children with access to health and education services.¹³ Hence, it is the job of not one single unit in the government but of all the units interlinked and as well as the society.

3. Child rights as Human Rights

An initial consideration of human rights and everyday life may appear abstract. The notion of human rights links it to the natural law. Under Natural Law everything which is moral is only correct irrespective of the fact that whether it is accepted by the law of the land or not. Aristotle writes, 'the natural is that which has the same validity everywhere and does not depend on acceptance'. John Rawls, the renowned American moral philosopher said that a state can only do justice to each and every citizen when it strips off its identity and makes the laws *i.e.* each individual deliberates behind the veil of ignorance. Likewise, child rights are also supposed to be brought into the legislative system without any prejudice.

Child rights was not a recognised concept in the primitive era. Racing the evolution of Human Rights, many important landmarks may be mentioned such as the Magna Carta (1215), which put forward the idea that no one was above law. The Universal Declaration of Human Rights is the basis for all international norms for children's rights.

Under Art. 24 of The International Covenant on Civil and Political Rights codifies the right of the child to special protection due to his minority, the right to a name, and the right to a nationality. Also, under Vienna Declaration it reiterates the principle of "First Call for Children", underlining the importance of major national and international efforts, especially those of the United Nations Children's Fund, for promoting respect for the rights of the child to survival, protection, development and participation¹⁴. It also states that measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the "World Declaration on the Survival, Protection and Development of Children and Plan of Action" adopted by the World Summit for Children.¹⁵ Effective protection of girl child is also one of the main aspects of this convention.

The Convention on Rights of the Child (CRC) is one of the most widely accepted conventions regarding child protection over the world. The CRC outlines rights in relation to children's well-being that relate to poverty and deprivation, as

¹³ ANON., 2017. *Child Rights in India. Child in India Statistics and Children in India* [viewed 15 March 2017]. Available from: <http://www.childlineindia.org.in/child-in-india.html>.

¹⁴ Convention on Vienna Declaration and Programme of Action, Vienna, June 25, 1993 UN General Assembly A/CONF.157/23 available at: <http://www.refworld.org/docid/3ae6b39ec.html> [accessed 13 March 2017].

¹⁵ Supra N 14 .

well as encompassing the right to life, survival & development as a core underlying principle.¹⁶ The preamble of the CRC calls for 'taking due account of traditions and cultural values', as does Art. 30 (relating to ethnic minorities). However, their rights are not much discussed and developed in developing countries. It is the state's responsibility to protect the human rights of all the citizens irrespective of their age, caste, colour, creed, gender. There can be no exceptions made with regard to the human rights. The realisation of human rights mandates establishing conditions for all human beings to lead minimally good lives and therefore should not be confused with perfect moral society.

The well-being of women and children is heavily determined by what happens in the private spheres of their lives: within their families, households and communities.¹⁷ It's not possible for International Organisations and Declaration to make changes each and every remote corner of the world and therefore the states under which these areas come have to take the responsibility to make a change.

4. Challenges faced by the children in the Indian Society

India being one of the developing countries has been facing challenges in all the sectors. Not all children are fortunate enough to receive an environment which is conducive to the development of these children; Especially with relation education and health. Children in especially difficult circumstances (CEDC) is a social global concern which attracts the attention of politicians, social workers, psychologists, administrators etc.

4.1. Poverty and lack of Access to Education

Poverty is one big issue for the Indian government. The extent of poverty varies largely accordingly, Orissa has the largest population below poverty line.¹⁸ People are not poor just because they are not financially strong or unemployed but also because of caste. Children live on the streets, they are abandoned, and cases are not few when they die due to hunger. Living on the streets or in urban slum dwellings, lack of basic facilities and unhygienic living conditions become a way of life. The UNCRC has recognised right to adequate housing as a right of every child.¹⁹

Education is the only way for a person to survive holistically in the society. According to Art. 21 A of the Indian Constitution children are bound to receive free and compulsory education from the age of 6-14.²⁰ In this context

¹⁶ Morrow, V. and K. Pells, 2017. Integrating Children's Human Rights and Child Poverty Debates: Examples from "Young Lives" in Ethiopia and India. *Sage Publications, Ltd*, 46(5 The Sociology of Human Rights), 906-920.

¹⁷ ANON., 2017. *Human rights for children and women: How UNICEF helps make them a reality*. www.unicef.org [viewed 13 March 2017]. Available from: https://www.unicef.org/publications/files/pub_humanrights_children_en.pdf.

¹⁸ Supra N 6.

¹⁹ Supra N 3.

²⁰ Art. 21 A, Constitution of India.

*Mohini Jain v. State of Karnataka (1992)*²¹ is a landmark judgement, wherein the Supreme Court held that the right to education is another unenumerated right which is a concomitant to fundamental rights. The current Education system does not draw the child towards the school and rather they tend to drop out from schools being pushed towards the black hole of "Child Labour". When one of the child labourers was asked about leaving the job and going to school, the boy commented²²:

"I cannot imagine a life without working. Work means everything to me. Unless I work, we cannot run our house, We need to buy food to run our home and I have to raise money to buy all these."

Only proper awareness programs and governmental aid can provide children with the education they deserve. There has to be implementation from the grass root level. The higher the level of education of the head of the household, the lower the poverty ratio. Even in rural areas rising level of education of the head of the household is associated with sharply declining poverty rates.²³

4.2. Child Trafficking

In India, a large number of children are trafficked every day. India being a country of both transit and destination, trafficking occurs internally as well in trans-boundary context as well.²⁴ Trafficking of children is a blatant violation of the human rights. Trafficking in its widest sense includes not just exploitation of prostitution of others or forms of sexual exploitation, it also includes forced labour or services, slavery or practices similar to slavery or trade in human beings for removal of organs²⁵, which clearly violates the Art. 21 of the Indian Constitution (Right to life which include right to live with Dignity). Not only this but it also violates the right to employment as well as right to self determination. At a consultation in New Delhi early this year on the draft bill, which was held by the National Commission for Protection of Child Rights (NCPCR), the overall opinion was that instead of a general legislation, a law focusing on sexual offences against children was needed since existing laws cover the other offences.²⁶ There are estimated to be over 900 000 sex workers in India. 30% are believed to be children.²⁷ Child victims of commercial sexual exploitation are deprived of basic necessities, suffer dangers of unwanted

²¹ *Mohini Jain v. State of Karnataka* [1992] 3 SCC 666.

²² Supra N 7.

²³ More, V. and A. Panagariya, 2017. *Poverty by Social, Religious & Economic Groups in India and Its Largest States 1993-94 to 2011-12*. 1st ed. Columbia University.

²⁴ ANON., 2017. *Child Trafficking in India* [viewed 13 March 2017]. Available from: [http://www.childtrafficking.com/ Docs/tdh_no_date__child_traffi.pdf](http://www.childtrafficking.com/Docs/tdh_no_date_child_traffi.pdf).

²⁵ Supra 12.

²⁶ ANON., 2010. Legislating for Children's Welfare: A new legislation to prevent abuse of children is in the works, but will implementation be any better than now? *Economic and Political Weekly*, 45(32), 8.

²⁷ Cologne, M., 2017. *Child Prostitution In India* [viewed 15 March 2017]. Available from: <http://www.hum-coolie.com/child-prostitution.htm>.

pregnancies, maternal mortality, torture, physical injury, mental trauma, disorders and sexually transmitted diseases.

4.3. *Child Labour*

According to Human Rights Watch, at least 15 million children are working as virtual slaves.²⁸ Agriculture accounts for 52 to 87 per cent of the population of bonded child labourers.²⁹ ‘At present there are 35 crore workers in the unorganised sector who are not paid the prescribed minimum wages, besides there are 12 crore children of the age 6 to 14 who are not going to schools & estimates of the number of child labourers in India vary from 60 million to 115 million.³⁰ According to Art. 24 of the Constitution of India, accepting the fact of prevalent child labour in India, provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.³¹ It includes bonded labour, domestic work, hotels, small shops etc. Being a highly unorganised sector and an invisible one, children are often brought into employment by family, relatives and friends. While some of them are brought to work as “friendly gesture”, there are times when these children are sold and trafficked. Many times, parents themselves send their children for work, sometimes in exchange for debt, thereby putting the child into bondage. These children mostly come from poor, low caste families. This has various healths, social, legal and economic effects on the victims. Various judicial precedents state more persuasively every time it comes with a new judgement regarding prohibition of child labour. One of the landmark judgements was *Bandhua Mukti Morcha v. Union of India (1997)*³² where a public interest litigation was filed alleging employment of children below 14 years of age in an carpet Industry in the State of U.P. The Court was of the opinion that various welfare enactments and State legislatures are only on paper and illusory unless they are effectively implemented.

4.4. *Child Marriage*

Being one of the oldest customs, Child Marriage still persists in some parts of the Country. To eradicate the problem of Child Marriage from the society, Government passed "The Prohibition of Child Marriage Act, 2006" which made the offence of Child Marriage cognizable and non bailable. It laid down the punishment for the male adult (rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both.), solemnizing the marriage (rigorous

²⁸ Human Rights Organisation, 1996. *Human Rights watch World Report 1996*. Human Rights Watch [viewed 13 March 2017]. Available from: <https://www.hrw.org/reports/1996/WR96/>.

²⁹ Nair IPS, P., 2017. *A Report on Trafficking in Women and Children in India 2002-2003*. National Human Rights Commission [viewed 13 March 2017]. Available from: <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>.

³⁰ *Ibidem*.

³¹ Rao, M., 2017. *Law relating to Women and Children*. 3rd ed. Lucknow: EBC Publishing (P)Ltd.

³² *Bandhua Mukti Morcha v. Union of India* [1997] 10 SCC 549.

imprisonment for 2 years or with fine which may extend to one lakh rupees or both) and abetting (rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both) the crime under the Act. Child Marriages leads to mental, psychological and physical illness. They are at a greater risk of experiencing dangerous complications in pregnancy and childbirth, contracting HIV/AIDS and suffering domestic violence. With little access to education and economic opportunities, they and their families are forced to suffer poverty.

4.5. Other Major Problems

The above mentioned are just a handful of problems faced by the children of the Indian Community. Female infanticide, violence and sexual abuse against children, working as domestic servants, child rape, children as migrants, HIV/AIDS are other grievous issues that are to be dealt seriously and as soon as possible. Children are the future of any country, they are the future generation. Their development and social growth is the state's responsibility. Government is supposed to take steps to increase the budgetary allocations with regard to children and also ensure that the entire amount allocated is spent on the child population. Most children in conflict with law are those who have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol abuse. There are also some children who have been caught for their criminal behaviour on account of being used or coerced by adults. Studies undertaken across the country, by and large, have shown that children who come in conflict with law are often treated at par with adult criminals.³³

5. National Legislations regarding Protection of Rights of Children

5.1. Constitutional Provisions.

The primary responsibility for protecting and safeguarding rights of the children is on the State. Considering the fact that India is a welfare state, the founding father of India recognised the importance of rights of the child in a nation's development. Dr. Ambedkar was far ahead of his time and wisdom projected these rights in the directive principles, including children as beneficiaries. The various constitutional provisions reflects the concern of the policymakers:

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

Art. 39-E - The state shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their strength.

Art. 39-f - Children shall be given opportunities and facilities to develop in

³³ Bhakhry, D., 2017. *Children in India and their Rights*. New Delhi: National Human Rights Commission [viewed 13 March 2017]. Available from: <http://nhrc.nic.in Documents/Publications/ChildrenRights.pdf>.

a healthy manner and in conditions of freedom and dignity and that childhood and youth shall be protected against moral and material abandonment.

As per The Constitution (Eighty-Sixth Amendment) Act, 2002, Art. 21A of India's Constitution establishes free and compulsory education for all children aged 6–14 years as a fundamental right. Art. 45 of the Constitution provides for early childhood care and education for all children until they reach age six.

Thus the Constitution if India makes it mandatory for every child to be entitled to health, well being, education and social protection without any discrimination on the ground of caste, colour, birth, sex, language, religion, social origin, property or birth alone.

5.2. Other major policies and legislations

The policy makers of the Indian Constitution were aware of the rights of the children and therefore there have been various legislations, enactments and policies regarding protection of rights since Independence.

Guardian and Wards Act (GAWA) 1890, Hindu Adoption and Maintenance Act, 1956 & The Child Labour (Prohibition and Regulation) Act, 1986 were some of the very first legislations that were implemented for the protection and development of child rights. The Act (GAWA) provides for appointment and declaration of guardians, duties, rights and liabilities of guardians among others, HAMA is an act to amend and modify the law relating to adoption and maintenance among Hindus. Child labour Act was the only act which somewhat protected Human rights of the children.

The Prohibition of Child Marriage Act, 2006 and Juvenile Justice (Care and Protection of Children) Act, 2000 (now Amendment Act 2006) are also the two legislations passed by the Government which states the protection of the rights of the children. Though, latter is an act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection. The act provides for proper care, protection and treatment of children by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation.

The Integrated Child Protection Scheme (ICPS) has significantly contributed to the realization of Government/State responsibility for creating a system that will efficiently and effectively protect children. Based on the cardinal principles of “protection of child rights” and “best interest of the child”, ICPS is achieving its objectives to contribute to the improvements in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children from their families.³⁴

³⁴ Ministry of Women & Child Development Government of India, 2017. *THE INTEGRATED CHILD PROTECTION SCHEME (ICPS) A Centrally Sponsored Scheme of Government – Civil Society Partnership*. Ministry of Women & Child Development Government of India.

It's main objectives include:

- To institutionalize essential services, strengthen structures for emergency outreach, institutional care, family and community based care, counselling and support services at each and every regional level.
- To create database and knowledge base for child protection services, including MIS and child tracking system in the country for effective implementation and monitoring of child protection services.
- To strengthen child protection at family and community level, create and promote preventive measures to protect children from situations of vulnerability, risk and abuse.
- To raise public awareness, educate public on child rights and protection on situation and vulnerabilities of children and families, on available child protection services, schemes and structures at all levels.

The National Commission for Protection of Child Rights (NCPCR) (set up in March 2007) objective is to ensure that all laws, policies, schemes, programmes, and administrative mechanisms for children in India are in consonance with the child rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child. The prime objectives of the Commission is to review the safeguards provided for protection of child rights and recommends measures for effective implementation, child literacy, enquire into violation of child rights, look into the matters relating to distressed, marginalised and disadvantaged children without family, children of prisoners, inspect juvenile home and recommend appropriate measures.³⁵

There are various NGO's which have taken path breaking initiatives for the care, development and rehabilitation of street and working children.

One of them is *Butterfly* which mainly works from the interstate bus terminals and railway stations in Delhi, also has its presence other parts of the country. The philosophy at Butterflies is that it is the National Policy on Child Labour right of every child to have a full-fledged childhood where she/he has the right to protection, respect, opportunities and participation for his/her growth and development. Butterflies adopts a participatory approach where they let their work be guided by the views and suggestions of children.³⁶ Deepalaya is working on issues affecting the urban and rural poor, with a special focus on children. They provide institutional care for the vulnerable sections namely the children who are under difficult circumstances like children of the drug addicts, or children with HIV+ parents or their parents are in jail or have run away.³⁷

A Standard Operating Procedure (SOP) for Care and Protection of Children in Street Situations for their rehabilitation and safeguarding was released

³⁵ Satpathy, C., 2017. *Child Welfare Policies and Programmes in India* [viewed 15 March 2017]. Available from: <http://www.insightsonindia.com/wp-content/uploads/2013/09/child-welfare-policies-and-programs-in-india.pdf>.

³⁶ Chopra, G., 2015. *Child Rights in India Challenges and Social Action*. 1st ed. New Delhi: Springer.

³⁷ *Ibidem*.

by Minister for Women & Child Development, Smt Maneka Sanjay Gandhi.³⁸ It is a framework for care and protection of children living in street situation as the problems faced by them are multi-dimensional and complex. Streamlining the interventions within the current legal and policy framework, the purpose of the SOP is to identify processes that should be set in motion once a child on the street has been identified as a child. Addition to this, The Parliament passed “The Rights of Persons with Disabilities Bill – 2016”. According to the Act - Every child with benchmark disability between the age group of 6 and 18 years shall have the right to free education. Government funded educational institutions as well as the government recognized institutions will have to provide inclusive education to the children with disabilities.

6. Challenges to Implementation

With relevant International Declarations and stronger National laws, India has tried to set standards for protection of the rights of the children. After analysing various policies and legislations of the government, unfortunately, it’s frequently reported, children are still at risk. They are exposed to some of the most inhuman cruelties and endure the worst forms of abuse. Since children are provided special protection under the law, violation of children’s rights is often newsworthy. There have been specific legislations for almost all possible problems that persists or that can crop up in the country. If there are enough legislations then why is that Children are sold by their parents for as little as Rs. 1000.³⁹ Until a proposed amendment made in 2012, the Child Labour (Prohibition and Regulation) Act, 1986 did not ban child labour, merely regulating their work conditions in industry. Children in the age group of 15-18 were ignored in legislation. Judicial statements, policies and schemes made for the welfare of children are still not being implemented efficiently, with ineffective coordination between the actors and institutions involved, and inadequate monitoring, transparency and accountability in the process.

Even the greatest of the democracies face the problem of implementation, India is no exception. In other words, the task is to design a system for protection, which would ensure that the rights of the child would be exercised as much as possible. In order for child protection agencies to become more effective and efficient they needed to utilise a framework that views child protection as part of a continuum of possible responses.⁴⁰ After analysing the above mentioned

³⁸ ANON., 2017. Standard Operating Procedure for Care and Protection of Children in Street Situations launched. In: *The SCC Online Blog*. 2017 [viewed 14 March 2017]. Available from: <http://blog.sconline.com/post/2017/02/22/standard-operating-procedure-for-care-and-protection-of-children-in-street-situations-launched/>.

³⁹ Watch, N., 2017. *Child Labour: Dealing with the Reality* [viewed 14 March 2017]. Available from: <http://socialwatchindia.net/blogs/511-child-labour-dealing-with-the-reality>.

⁴⁰ SCRCSSP (Steering Committee for the Review of Commonwealth/State Service Provision), 2003. *Efficiency Measures for Child Protection and Support Pathways - Reforms in Government Service Provision*. Canberra: AusInfo.

legislations, the researcher acknowledged the fact that the existing legal standards on the rights of the child still need to be more fully developed, particularly where norms are too flexible or standards too low.

Lack of services and technology system prove to be a hurdle. For eg.: An organisation named "Child Line" in India whose role is restricted to immediate protection for the child in difficult circumstances through direct or indirect assistance. The responsibility of long term rehabilitation rests on the government entities such as allied systems and Child Welfare Committees. In some cases, children are sent to shelter homes or other concerned agencies not functioning well enough and many such facilities do not even exist in rural or semi urban areas. Therefore, even if the CHILDLINE team is intimated of a child in distress and able to reach the child in time, lack of efficient social welfare support services proves to be a hurdle in the whole process of crisis intervention and long term rehabilitation.⁴¹

There is no cross checking within the units of the government bodies and other subsidiary functionaries. The states also lack efficient services of recovery and reintegration of children victims of violations of their rights. Throughout the States Parties to the CRC, children are deprived of services that include support for self-advocacy, access to complaint procedures and to the courts, lack of legal and other assistance and lack of an enforceable system of reparation, including compensation.

These inefficiencies are closely related to insufficient organizational, financial and legal capacities. But blaming only the government and the legislative bodies is not entirely correct. Problems levels of awareness, attitudes, stereotypes and prejudices are tenacious. Additional constrain is lack of appropriate training of legislators, judiciary and enforcement structures.

As indicated, main factors that impede enforcement of child rights are lack of the rule of law, lack of participation and accountability, widespread corruption. As a consequence, the researcher has noted serious violations of child rights, including grave violence against children and widespread and legally and socially accepted impunity of perpetrators. It seems that lack of political will, structural incapacities and lack of understanding of specific nature of child rights lie in the heart of all failures to effectively and efficiently enforce child rights

7. Recommendations

Child rights can be best realized when the State provides for a high level of participation, equality, the rule of law and efficiency.

The researcher recommends following methods for the proper implementation of the child related legislations:

- The very first implementation is to adhere to the International standards and then efficiently apply it in their national legislations after taking into consideration the principles of *justice, equity and good conscience*.

⁴¹ Khurana, M. and A. Dayal, 2017. *Case Studies on E- Governance in India* [viewed 15 March 2017]. Available from: <http://nisg.org/files/documents/UP1418303928.pdf>.

- No right of the child can be fully implemented until there is a *structural improvement* in the government hierarchy. Such measures on every level of governance, including the local communities.
- *Good governance* in the area of the rights of the child is measurable by the level of realization of those rights. If the government don't recognize these rights, laymen definitely can't be expected to do so.
- Achieving high level of exercise of child rights is not possible within a governance system that is *non-transparent, disorganized, corrupt and non-accountable*.
- Comprehensive *reviews of legislation*, inclusion of *children's rights in the Constitution*, the *development of specific laws* to reflect the CRC principles and provisions, *responding to "new" issues* related to children's rights and considering effective remedies for children and their representatives if children's rights.
- *Media* can also play a very important role in publicizing child rights violations and can alert both public and judiciary.
- *Visibility of children in State budgets* and allocation of sufficient funds on all levels of government should be one of the mandatory tasks.
- A successful implementation of the CRC on a very *grass-root level* is unthinkable without *involvement of small, locally based NGOs* and this is where *both Governments and international community* should invest more so that rights of the child are efficiently protected.
- Contribution of *Independent Human rights organisation* which works at the ground level for betterment and development of the children

8. Conclusion

Children are the most sensitive, fragile community of all living on this earth. They deserve respect, dignity and are entitled to full rights like every other human being. The researcher has analysed various problems and legislations regarding the rights of the children and the major issue that is found is that of "Implementation". Keeping in mind the sustainable development concept, where resources are supposed to be used judiciously for future generations, the most important resource to be saved is human resources itself.

A holistic approach is needed to service delivery, re-balancing the provision of child protection and family support such that child protection no longer drives the system but becomes merely one important facet in an overall welfare assessment. The problem with India, most of the developing countries and some of the developed countries is that there is lack of awareness, this stigma of child having no rights is still attached to the society. The weaker legislations make the implementation poorer.

The focus should be on preventive measures by making them realistic and visible. Alternative measures allowing for responses to violation of child rights without resorting to judicial proceedings might in cases of minor violations be

more conducive to well-being of the child. The notion of child rights will keep on developing because the society keeps changing its behavioural patterns and therefore, Law has to keep pace with it and move towards better implementation of the rights of the future generation. Lack of efficient laws regarding children will only lead to ineffective future generation to take hold of the entire country, which is *in toto* bad for the economic and social development of the nation.

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