CHILDREN IN AREAS OF CIVIL UNREST AND THE COMPETING CLAIMS OF INTERNAL CONFLICT AND NATIONAL SELF DETERMINATION

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ABSTRACT

Protection of children caught in civil unrest or internal armed conflict is one of the most important humanitarian accountability of the State. It imposes a direct obligation upon the State to identify risks and vulnerabilities, prevent abuse at the hands of the parties to the conflict and enforce child protection measures through formal government mechanisms as well as engaged informal partnerships with community groups, NGOs and civil society. However, the ethical dilemma of timely State intervention is often the inability to respond to such a crisis because the State is either unwilling or unable to ensure the protection of child rights. Unwillingness or non-recognition in most third world countries is principally guided by the inherent linkages drawn between child victimization and escalating violence. The latter risks in increasing the legally understood threshold of such protracted violence as internal conflicts within the meaning of the Geneva Conventions, thereby falling within the ambit of international law. Technically, such situations permit intervention under Chapter VII of the UN Charter (Vimug, 2010). Equally, the financial costs accrued on the State to launch such interventions outweigh the cost-benefit analysis where the State is more engaged in establishing the rule of law.

State’s inability to respond to the crisis is also due to her security centric approach to control the escalating violence perpetrated by the parties to the conflict, absence of the rule of law, negligible government penetration in the affected areas and institutional collapse of important State run health and educational services.

The scenario is particularly prevalent in third world States where the affected State is witnessing localized but protracted armed violence. The aggrieved communities

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2 The thesis refers to the term 'civil unrest' as against internal conflict or conflict since the latter has a definitive legal interpretation within the meaning of the Geneva Conventions with respect to the threshold of armed violence. Civil unrest is referred in the thesis is referred to situations in Kashmir and Northeast India where the state has imposed the Armed Forces (Special Powers) Act and situations affected by Left Wing Extremism. In both contingencies the aggrieved communities as involved in protracted violence demanding secession from the parent State.
justify violence as a fight for their legitimate right to secession through national self
determination being ethnically/culturally different from the parent State. In both
scenarios the affected State is reluctant to recognize child vulnerability due to the
linkages drawn between child participation and internal armed conflict within the
meaning of the Geneva Conventions.

seized international attention towards child recruitment, exploitation and abuse in
such situations. The international community in an endaevour to stop this practice
passed stringent resolutions/Statutes imposing obligations upon State parties to act. In
1999 recruitment of children was recognized as a threat to international peace thereby
giving the option to act under Chapter VII of the UN Charter (S/RES/1314 of 2000),
'naming and shaming' parties to the conflict, calling to end impunity towards grave
crimes committed against children (S/RES/1379) and recognizing recruitment of
children as a war crime [Art. 8(2)(b)(xxvi), (e)(vii) of the Rome Statute].

These efforts to protect children paid off in fragile/failed states where the international
community mandated to intervene in the host State but did little to influence in
localized situations in third world where the aggrieved communities were allegedly
fighting for the right to national self-determination (India, Sri Lanka, Nepal, etc). On
the contrary, the affected States have become increasingly reluctant to recognize child
vulnerabilities viewing any such international concern as an intrusion into State
sovereignty.

India is a classic example wherein the State is witnessing protracted civil unrest in
more than sixteen states across the country. The situation in Kashmir and Northeast
Indian are continuing intermittently since independence in 1947 wherein the
aggrieved communities are demanding secession through national self-determination
being ethnically/culturally different. Despite the international community referring to
situations in Kashmir, Northeast and LWE affected areas as internal armed conflicts
within the meaning of the Geneva Conventions, the State has sought to exercise
sovereign discretion to label these situations of protracted armed violence against the
State as a law and order problem with the State’s domestic framework. India does not
recognize the right of the aggrieved communities to self-determination and thus the
legitimacy of violence. The right to secede is the external component of the right to
self-determination which is not applicable to these situations while the citizens’ right to choose their own form of government is the internal component of self-determination which has been duly granted to the communities.

The consequence thereof is the impact on children. Due to the non-recognition of the problem as a situation of protracted armed violence the State neither recognizes the vulnerability children nor has launched any special programme towards their protection and wellbeing. Though India as a State party to the UNCRC first mentioned the possible impact of the situation on children that the prevailing situation sometimes disrupts normal life and interferes with children’s access to education, health and other basic services often creating fear and psychological problems (UN. CRC/C/93/add.5 2003, Para 1085) but the State denies their involvement in active duties. However, India has for the first time been mentioned in the UN Security Council Fifth Cross-Cutting Report on Children and Armed Conflict (2011) as one of the States where children are being recruited by armed groups.

The thesis explores some of these key questions affecting children in Northeast India (reeling under the AFSPA) and the LWE affected regions. First, the State reluctance to recognize child victimization in both these scenarios owing to the reasons of non-recognition due to the nature of violence (internal conflict, national self-determination, etc). Second, the consequential fallout of non-recognition adversely affecting their right to education and health by taking study in two Blocks in Kokrajahar and Chirang in Northeast and three in Sukma District, Chhattisgarh, Khamam District, Andhra Pradesh and Gadchiroli District, Maharashtra.

State's non recognition of the problem and her failure to launch special child protection schemes in civil unrest areas has long term consequences. It risks protracted violence and even if peace is forthcoming due to the dominant security control of the State, it will merely be a buffer between two conflict time zones without any sustainable efforts towards the resolution of the civil unrest.

Child centric interventions are the most effective approaches towards conflict resolution and the absence thereof has forced many states to relapse into conflict within five years. Mozambique, Angola and Ethiopia did not recognize the need for children's rehabilitation and reintegration as part of the post conflict arrangements and
a result of which relapsed into conflict. In Angola children were abandoned to their own devices because the demobilization programmes were designed to avoid the financial costs of providing benefits to nearly seven thousand child soldiers. (UN Document, CRC/C/3/Add.66 (2004), (Angola), Para 229 – 268). Increased poverty, devastation of villages and the displacement of more than 2 million populations as a result of conflict gave rise to the phenomenon of street children in Angola (Commission of Africa Report, Our Common Interest, Pg 171). These factors being the common denominators of most African states in conflict have witnessed relapse in most of these states within five years and the lack of sustainable rehabilitation measures for child victims has tremendously increased their chances of return and, in turn recruit a new generation of child warriors.

Due to the protracted nature of violence and the coercive presence of the armed forces there is little/negligible role of the community participation towards self-governance, self-determination and participation in the decision making process affecting their lives and their children. Children are victims of forced migration and displacement, inhumane living conditions in the camps with little or no access to basic health and education facilities.

State sponsored schemes afford no protection to children from the direct and collateral effects of the civil unrest due to institutional inadequacy. Negligible government penetration in remote areas, inadequate monitoring of Flagship Programmes like the ICDS, SSA, MGNREGA, etc has created an infrastructure deficit directly affecting access to health and education with its manifestations on other collateral vulnerabilities like poverty, breakdown of family structure, child labour, displacement, abuse and violence, migration/trafficking and persistent deprivations such as illiteracy, infant mortality, etc. As a result, children are also victims of neglect and deprivation due to high incidence of poverty, non-penetration of government projects and gross violation of children Civil and Political Rights and Economic Social and Cultural rights with particular reference to health and education.

The social context is equally relevant since these situations have existed for more than three decades (LWE was officially recognized as a problem in 2003 by the State). Three generations of childhood has been lost to the civil unrest. Children have grown

3 MHA (2012), Ministry of Home Affairs Government of India, Annual Report pg 36 2.9.18(i)
up one to witness the coercive face of the State through her armed forces. Human rights as freedom is abysmally nonexistent. Special legislations infringe upon basic human rights as a trade off against the security of the State. The resultant fallout is from an array of socio-economic and political disorders which has denied them the inherent right to live with basic dignity.

Protracted security centric policies has created development voids, increased governance gaps and limited the reach of child centric institutions. This has also resulted in widespread displacement of the communities re-located in relief camps taking shelter in safe zones and identified as Internally Displaced Persons (IDP) either within the State or outside the State. In both situations children continue to live with a loss of livelihood, negligible reach of education and health projects, lack of social and personal security and a life of anxiety. Children's allegedly involved in illegal activities are invariably at risk of being treated as adults or subject to abuse at the hands of the Police/armed forces having no option to come out of the cycle of violence.

The non-recognition of the problem of child vulnerability by the State and the absence of strong rehabilitation measures increase their vulnerability to choose the easier option to going back into conflict than to face the wrath of poverty in transitional societies which had forced them to join armed groups in the first place.

The complex nature of the problem (secession through national self-determination) being witnessed in most third world states is a hard reality and the affected state has to identify measures to address the needs of children. If this reality is ignored or is not recognized by the State, then the possible quest for sustainable peace in these conflict areas may just be seen as a distant reality. Even if peace forthcoming, it may just be a buffer peace between two conflict time zones because if justice and rehabilitation is denied to these children at this formative stage of their mental and social development then the likelihood of their later involvement in conflict increases.4 Table I below shows the collateral indices of vulnerability not only impacting the child/family but

also the consequential manifestations at the community and the national level (see Collateral indices of vulnerability: children in civil unrest).

Broadly, the thesis is divided into five chapters. The first chapter examines the political context of the civil unrest to include state intervention strategy in the Disturbed Areas under the Armed Forces (Special Powers) Act and the Left Wing Extremism (LWE) affected areas. Chapter two examines various legally established thresholds of violence with its consequential impact on the State party. Briefly, the thresholds include, law and order, public order, state of emergency, armed conflict not of an international character, internal armed conflict within the meaning of the Geneva Conventions and a full blown armed conflict. The key questions: why are States witnessing localized civil unrest reluctant to qualify such violence within the legally understood threshold of violence and what is the complexity of defining child participation/victimization as part of armed groups in such settings?

Chapter three examines the legal protection (international and domestic) accorded to children in such settings. Chapter four examines the status of those children who are involved in the civil unrest and fall within the definition of a Child Associated with an Armed Force or Armed Group (as defined in the Paris Principles 2007) when they come in contact with the armed forces. Are these children to be treated as Children in Need for Care and Protection or in Conflict with Law?

Chapter five is a field study which examines the implementation of Child Rights in Areas of Civil Unrest through a community based intervention model wherein the intervention first de links the status of children with the prevailing security situation so as to render greater reach to the intervention and create a neutral operability space within areas under State control and those allegedly under dominant control of the armed groups. The field study also proposes a Community-State interface (C&S) wherein the community itself formulates a model of self governance towards the protection of child right and dovetails its interventions with State sponsored programmes. The C&S is contextualized in a manner that each of the constituents (Community and State) strengthens the competing limitations of the other. NGOs/community based interventions have tremendous capacity to create a moral and physical space for intervention but are limited by the financial and institutional resources to ensure universal reach. The State, on the other hand has the financial and
institutional supports but lack in its capacity to create a space of acceptance in the fractured society witnessing wide scale violence and abuse of human rights at the hands of both parties to the civil unrest. Chapter V gives out the recommendations of the study.

The thesis is a multidisciplinary study focusing on qualitative research relating to the legal status of children in areas of civil unrest. The field study has relied on quantitative primary data based on the researcher field work while working with the National Commission for the Protection of Child Rights, New Delhi under the Bal Bandhu Scheme for the Protection of Child Rights in areas of Civil Unrest.\(^5\)

The key findings of the study highlight the need to de link the protracted armed violence with the need to intervene towards the protection of child rights. It is unlikely that any of the third world states witnessing protracted armed violence where the aggrieved communities are fighting for secession will recognize the nature of violence beyond the law and order domain or (at best) public order. As a result, children will continue to remain vulnerable and subject to exploitation while the state will not launch any special measures towards their protection because of the complex linking between children and the existence of an internal armed conflict within the meaning of the Geneva Conventions. The findings also recommend grass-root interventions by creating village base child rights committees (Bal Mitr Samities) which exclusively focus on child rights and dovetail their intervention within the state sponsored projects so as to create a ‘Community-State Interface’

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(a) To intervene in ten Districts in five States in areas of civil unrest with the mandate to protect child rights, focusing attention on mobilization of communities through trained local volunteers or ‘Bal Bandhus’ who will act as child defenders.
(b) To bring stability in the lives of children in the process of ensuring that all their entitlements to protection, health, nutrition, sanitation, education and safety, are fulfilled through Government action.
(c) To enhance democracy through community participation and action and renew hope in harmonizing the society and stabilizing lives while a child’s well-being becomes the focus of all action in the area.
Table I: COLLATERAL INDICES OF VULNERABILITY: CHILDREN IN CIVIL UNREST

<table>
<thead>
<tr>
<th>Manifestations</th>
<th>Child/Family</th>
<th>Community</th>
<th>National Building</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Civil Unrest</strong></td>
<td>✓ Increased poverty.</td>
<td>✓ Lack of community participation.</td>
<td>✓ Urban Clustering around Block/District Headquarters.</td>
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<tr>
<td>Coercion and Victimization by armed forces.</td>
<td>✓ Persistent deprivation such as illiteracy, infant mortality, etc.</td>
<td>✓ Socio economic upheavals.</td>
<td>✓ Loosening Government control in the remote areas.</td>
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<tr>
<td>Power duality.</td>
<td>✓ Health vulnerabilities.</td>
<td>✓ Redundancy of government projects.</td>
<td>✓ Weakening democratic control</td>
</tr>
<tr>
<td>Increasing Zone of dominance of the rebels/armed groups.</td>
<td>✓ School dropouts.</td>
<td>✓ Nonfunctional basic health and education infrastructure</td>
<td>No public accountability.</td>
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<tr>
<td><strong>Local Vulnerabilities</strong></td>
<td>✓ Risk of substance abuse.</td>
<td>✓ Erosion of faith from the local administration.</td>
<td>✓ Militarization led by impunity of the armed forces.</td>
</tr>
<tr>
<td>Increasing interaction of children with the rebels.</td>
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<td></td>
<td>✓ Resource exploitation.</td>
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<tr>
<td>Child Marriages.</td>
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<tr>
<td>Child Labour.</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Migration/trafficking.</td>
<td></td>
<td></td>
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<tr>
<td><strong>Institutions</strong></td>
<td></td>
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<tr>
<td>Poor/ non existent PDS.</td>
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<tr>
<td>Limited Government Penetration.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Do Insult/ non functional health and education institutions.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contractor outsourced development within the immediate influence of the BlockDistrict Headquarters.</td>
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</table>

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