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# Child Rights Violated in Bloodshed: Shielding the Virtuous Victims

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YASH PATIL<sup>1</sup>

## ABSTRACT

*We live in a world where conflict may very quickly take the form of war, resulting in the loss of life and property. Armed conflict is fairly common. These military wars have had the greatest impact on one of society's most vulnerable groups: children. Children are the innocent victims of armed wars. To begin, the author will discuss the establishment of individual rights for children in the arena of international law, as shown by the signing of treaties and the adoption of protocols. Following that, this study examines the six severe breaches that have an impact on children in armed conflicts, both from an international and an Indian viewpoint. As the author delves into the six major infractions, he demonstrates how these breaches impinge on the rights granted to these children by both international treaties and domestic Indian legislation. The study then examines the various methods by which such children might be rehabilitated back into society, including an examination of the appropriate legislative laws. Included in these clauses is the statutory responsibility placed on the state to guarantee rehabilitation via the use of shelter houses, foster families, and the protection of children via hotline numbers. The author also demonstrates how some of these regulations have been shown to be glaringly ineffective in the recovery of children who have been harmed by violent wars. Despite the fact that these legislative protections impose a responsibility on the state in the form of rehabilitation, public engagement in Indian society is essentially non-existent. The author offers several strategies for raising awareness among the general public about the plight of children caught up in armed conflict, as well as measures for society to assist in the rehabilitation of these youngsters.*

**Keywords:** *Rehabilitation, Sexual assault against children, Child Soldiers.*

## I. INTRODUCTION

A state's political environment has always included some level of conflict, dating back to the dawn of time. These disputes may occur between two states, one state and one non-state body, or two non-state bodies. They may also occur between two non-state entities. While

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international norms attempt to keep these disputes at the lowest possible degree of violence, some instances have been documented in which these wars have been cruel and devastating, despite these efforts. Armed conflicts are the most common setting for this kind of savagery. Armed conflict is defined as a battle between state and non-state entities that takes place inside or outside of national borders and involves the use of weaponry.<sup>2</sup> Armed conflicts are often characterised by the employment of small guns, which leads in longer-lasting wars, a greater number of fighters, and a greater effect on the lives of civilians, particularly children, than other types of conflicts. Small weaponry is used to terrify civilians, assist the recruitment of minors into armed conflict as young soldiers, and commit a variety of crimes such as rape. Armed conflicts have an impact on everyone in the region of conflict, but for a long time, children have been at the core of the conflict.<sup>3</sup> These armed assaults have a broad range of consequences for children, which may be divided into two primary categories: direct consequences and indirect consequences. Physical harm, mental health consequences, sexual assault, and death are all examples of direct influence on a person. Aside from the direct consequences of war, indirect consequences include the loss of fundamental infrastructure, poverty, and exposure to the environment.<sup>4</sup>

Since the beginning of the 20<sup>th</sup> century, India has been the scene of violent conflicts inside its borders, such as the Naxal struggle in Chhattisgarh and the Jharkhand war. In 2008, the United Nations released a study on the plight of children in the Chhattisgarh Naxal Conflict, which revealed the harrowing conditions in which children were living throughout the conflict. According to the study, one assault on a small community resulted in the deaths of hundreds of youngsters under the age of 15 as a result of the onslaught. Thousands of young boys have been recruited to fight with them by the Naxalites and the police. Parents were hesitant to give their children with a decent education because they were concerned about a Naxal assault on a school. The most surprising finding was that neither the central government nor the state governments had made any tangible effort to remove children from the conflict-affected regions, which was a complete surprise to everyone.<sup>5</sup> Additionally, in terrorist-infected areas of Jammu and Kashmir, a considerable number of youngsters are registered as “young soldiers” to fight on the terrorist’s behalf against Indian authorities in the name of freedom. Teenage

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<sup>2</sup> Sherry Shenoda, Ayesha Kadir and Others, “*The Effect of Armed Conflict on Children.*” (2018) 142 Official Journal of the American Academy of Pediatrics 6.

<sup>3</sup> Rachel Stohl. “*Targeting Children: Small Arms and Children in Conflict.*” (2002) 9 The Brown Journal of World Affairs 281.

<sup>4</sup> Sherry Shenoda, Ayesha Kadir and Others, “*The Effect of Armed Conflict on Children.*” (2018) 142 Official Journal of the American Academy of Pediatrics 6.

<sup>5</sup> John Emmerson “*Dangerous Duty: Children and the Chhattisgarh Conflict.*” (HRW.org, 2008), <<https://www.hrw.org/report/2008/09/05/dangerous-duty/children-and-chhattisgarh-conflict>>

boys are kidnapped in Jammu and Kashmir, where they are enrolled in terrorist camps, where they are indoctrinated with anti-government ideology and trained to be undetected young soldiers. In a similar vein, children are cruelly slain or injured when assaults on tiny settlements occur.<sup>6</sup> Using these two instances, we can see that India is falling behind the times when it comes to safeguarding its children from the horrible tortures of war.

The author will be discussing the rights of children in armed conflicts in this paper. For starters, he'll cover the International Provisions for the Protection of Children in Armed Conflicts, demonstrating how, in 1989, the international community recognised the rights of children and moved on to defend those rights in the event of an armed conflict. Following that, the author will discuss how armed conflicts result in major violations such as the killing and maiming of children, abductions, attacks on schools and hospitals, sexual violence against children, the recruitment of child soldiers, and the denial of humanitarian assistance to those who are in need. All of these infractions will be explored in depth in separate parts. Following that, the author will examine the present legislative system in India for the protection of children caught up in armed conflicts, as well as how it is not totally effective in achieving its mandate. Finally, the author will provide some proposals that might be implemented by the Indian government in order to improve the safety of children.

## II. UNITED NATIONS – CHILDREN'S PROTECTION IN CONFLICT

First and first, in order to safeguard children in armed conflicts, it was necessary to provide them certain unalienable rights, which might then serve as a foundation for protection. However, before to 1989, the notion of children having unique individual rights was seen as a liberal notion that was not accepted by the international community. The Convention on the Rights of the Child (CRC) was overwhelmingly approved by the United Nations General Assembly in 1989, marking the beginning of the modern age of child rights. Specifically, this treaty recognised the rights of children in their everyday lives and required that children be protected from being subjected to violations of these rights. When it came to the section on child protection in armed conflicts, this treaty identified children as “non-participatory victims” who were the ones who suffered the most as a result of the war. The states were required to act on the basis of goodwill and to safeguard children under the terms of this agreement.<sup>7</sup> Specifically, articles 38 and 39 of the Convention on the Rights of the Child (CRC) dealt with

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<sup>6</sup> Khalid Shah, “*Children as Combatants and the Failure of State and Society: The case of Kashmir Conflict*” (ORF Issue Brief, 2019) <<https://www.orfonline.org/research/children-as-combatants-and-the-failure-of-state-and-society-the-case-of-the-kashmir-conflict-47514/>>

<sup>7</sup> Ananda S. Millard, “*Children in Armed Conflicts: Transcending Legal Responses.*” (2001) 32 Security Dialogue 187.

the protection of children in wartime. State governments were required by Article 38 to prohibit the recruitment of minors under the age of 15 to serve in the military and to rescue minors who were recruited by non-governmental organisations. Education, medical and psychological treatment, as well as enhancing the dignity of children who were victims of violent wars, were all mandated under Article 39.<sup>8</sup>

With the goal of promoting the protection of children's rights during armed conflicts in mind, the United Nations adopted an Optional Protocol for the Protection of Children from the Dangers of Armed Conflict in 2002. With the adoption of this agreement, the targeting of minors in armed conflicts was denounced, and the age limit for minors was raised from 15 to 18 years. It was under this agreement that the recruitment of minors into armed conflicts by non-state actors was made illegal. It encouraged the parties to the agreement to penalise non-state actors who violated the agreement's terms and conditions. When children were first appointed to military service by the state, some basic criteria were established, such as the child's voluntary agreement and the parent's informed permission, among other things, to ensure that children would not end up in harm's way. Another aspect of this protocol was that all signatories were required to provide a report on the measures taken by their respective governments in order to enforce the treaty's requirements.<sup>9</sup> Both of these agreements have been ratified by India, which has also taken measures to ensure the safety of children during armed situations. Evidence of this is seen in the fact that India filed its required report on the steps taken to safeguard children during armed situations in 2013. All of the measures and legal protections for the protection and rehabilitation of children who have been harmed by armed conflicts will be addressed in more detail in a subsequent section.

According to the United Nations Security Council, the "*Six Grave Violations*" were established in order to encourage more widespread and simpler reporting of crimes against children occurring during armed conflicts. Six major kinds of crimes against children are perpetrated against them in armed situations, and these six severe breaches are the most serious of these crimes. The international community's primary focus when it comes to safeguarding children in armed situations is on preventing these six infractions from occurring. Death and maiming of children; recruitment of children as child soldiers; sexual violence against children; kidnapping of children; strikes on schools and hospitals; denial of humanitarian assistance to children are among the six severe breaches.<sup>10</sup> All six of these infractions will be addressed in

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<sup>8</sup> United Nations, "*Convention on the Rights of Child.*" 1989, Articles 38 and 39.

<sup>9</sup> United Nations, "*Option Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflicts.*" 2002.

<sup>10</sup> United Nations, "*The Six Grave Violations.*"

more depth in the following sections.

### III. CHILDREN ABDUCTION

The kidnapping of children from their lawful guardians is a significant type of serious abuse of children in armed situations. Child abduction is the initial step towards all kinds of horrors they experience. Child abduction rates are extremely high, particularly over the past 10-15 years. For the most part, abducted children are tormented with physical and sexual assault, forced marriage for females, exploitative child labor or enlistment in ranks of the military.<sup>11</sup>

Kidnapped youngsters are forced to work hard and exploited for trafficking reasons. While the most frequent type of work is assignment as child soldiers, kids are often engaged in cooking, cleaning and other camp-related tasks. In 1999, International Labor Organization banned all kinds of child labor. At the International Labor Conference, 1989, all nations met to combat child labor. This agreement seeks to protect children under 14 from all kinds of hard work.<sup>12</sup> India signed this agreement and is also working hard to safeguard children from harsh labor. The Child Work Act, 1986 seeks to protect children from child labor via imprisonment and penalties. Schedule A of the Act lists all forbidden fields of employment, including much of the labor done by the kidnapped minors.<sup>13</sup> Aside from the aforementioned laws, the Indian Penal Code addresses the crime of kidnapping a child for the purpose of slavery as well as inflicting severe harm. Section 367 of the Penal Code provides for a maximum sentence of seven years in prison for this offence.<sup>14</sup> Abducted girls are exploited for trafficking and sexual exploitation in addition to underage labor. Then, by enlisting them as Child Soldiers, youngsters are exploited as fighters. These will be addressed in subsequent sections.

All of these kinds of abuse inflicted on these kidnapped children result in a variety of physical and psychological problems. Abducted children who are recovered exhibit symptoms of despair, anxiety, aggression, and a continuous dread of assault, according to many studies.<sup>15</sup> In addition, children impacted by armed wars have insomnia, serious injuries, and medical issues such as HIV AIDS, among other things. As a consequence, kidnapping children has a significant negative impact on their mental and physical health, resulting in a terrible existence

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<sup>11</sup> United Nations, "Abduction", <<https://childrenandarmedconflict.un.org/six-grave-violations/abduction-of-children/>>

<sup>12</sup> International Labor Organization, "ILO adopts Convention banning worst forms of Child Labor and Starts a Campaign for its Ratification.", (ILO.org, 1999)

<sup>13</sup> Child Labor (Protection and Regulation) Act, 1986.

<sup>14</sup> Indian Penal Code, 1860, Section 367.

<sup>15</sup> Red Cross and Red Crescent Society, "Psychological Effects of Armed Conflict on Children." In 'Psycho-Social Assistance to Children in Armed Conflict', (1999), <<http://helid.digicollection.org/en/d/Js2670e/2.2.2.html>> accessed on 12th May 2020.

for these youngsters.

#### IV. CHILD SOLDIERS RECRUITMENT

The most frequent and serious type of child rights violation in armed conflicts is when children are enlisted as child soldiers. Children have been used as soldiers in militaries from time immemorial. Similarly, many non-state terrorist organizations recruit a large number of youngsters as troops. These youngsters are forced to fight in battles, serve as spies, and work as sex prostitutes. Enrollment as a child soldier does not imply membership in an extreme organization; rather, they are utilized as a bargaining chip against the government.<sup>16</sup>

While it is often assumed that most child soldiers are males, this assumption is incorrect. During an assault on a community, gangs tend to kidnap young boys and girls in order to enlist them as troops. The duties assigned to them are determined by their imagined gender roles. Boys are often assigned to roles such as heavy combat, cooks, espionage, and doctors. Adolescent females, on the other hand, are often exploited as sex slaves. One female is assigned to one lord to manage the lord's home while simultaneously engaging in sexual activities. Girls are also tasked with participating in agricultural tasks in order to support the whole group, as well as assisting with cooking.<sup>17</sup>

Children are not just victims of armed rebellion, but also guilty. While young soldiers are exposed to many horrific events, many years of rigorous training make them devoted and strong warriors, fighting till the last breath for the organization. Child soldiers are made loyal by employing life-threatening tools and by feeding them with their propaganda, which makes them sympathetic to the cause. As part of the training, they are made to perform various crimes including murdering a buddy, raping a female, etc.<sup>18</sup> Such horrific events scare young youngsters for life. Such child soldiers suffer significant psychological problems such as PTSD, bodily injuries, illnesses such as HIV (due to multiple rape), and their communities' non-acceptance. Consequently, enrolling as child soldiers has a lifetime detrimental effect on youngsters, which makes rehabilitation very difficult.

The Optional Protocol to the Convention on the Rights of the Child bans the enrollment of a child before the age of eighteen years. Article 3 of the convention forbids the recruitment of minors as child combatants (kid soldiers). Even if such appointments by non-state

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<sup>16</sup> Karmanye Thadani and Shubham Saket, "Child Soldier: Their Recruitment, How They are Treated and Position in International Law." (2010) 2 GJLDP 109.

<sup>17</sup> Dyan Mazurana and Kristopher Carlson, "The Girl Child and the Armed Conflict: Recognizing and Addressing Grave Violations of Girls' Human Rights." (2006)

<sup>18</sup> Dr. A.B. Siddique, "Child Soldier in India." (2015) 4 International Journal of Advanced Research in Management and Social Sciences 32.

organizations are strictly banned, appointments made by the state are permitted, provided that they meet certain criteria. In order to limit the participation of children as soldiers, the protocol requires that agreement to join the organization should be entirely voluntary, with the previous approval of the parent or guardian, and that child soldiers should only be employed as a last resort after all other options have been exhausted.<sup>19</sup> Then, according to Article 8(2)(b)(xxvi) of the Rome Statute of the International Criminal Court, enrolling minors under the age of 15 in armed forces is a war crime.<sup>20</sup> This rule applies to entities engaged in military operations, whether they are state or non-state enterprises, under any circumstances. Prior to the establishment of these conventions, many nations used to appoint youngsters as soldiers to defend their nations interests during times of war. However, since then, the majority of signatories have taken a number of measures to decrease the number of minors enlisted in military service.

As India is a party to the Optional Protocol, it has undertaken numerous legislative reforms to prevent child enlistment in armed hostilities. For example, Indian Armed Forces minimum recruiting age is 17.5 years. Then, Section 83 of the Juvenile Justice Act, 2015 says that if any non-state armed entity employs minors for any reason, they would face up to 7 years jail.<sup>21</sup> These Central Regulations are not adequate to prevent young soldiers from being enlisted. Naxals and Kashmir militants reported almost 5,000 youngsters as troops. Then even state organizations like Madhya Pradesh and Chhattisgarh police are engaged in appointing minors under the age of 18 as “*Boy Orders*”.<sup>22</sup> All of these instances demonstrate that India still has a long way to go to prevent its children from becoming a child soldier.

## V. ASSASSINATION AND MAIMING OF CHILDREN

Children, as previously said, are at the heart of every dispute in which they find themselves. Children have been exploited as pawns in military battles throughout history. These tools are employed to instill fear and panic in the hearts and minds of the general public. It has been shown that the act of murdering children has a negative effect on the strength and cohesiveness of a community.<sup>23</sup> While murdering anybody is considered immoral and filthy, murdering innocent children is particularly repugnant and revolting. When it comes to war, the act of

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<sup>19</sup> United Nations, “*Option Protocol to the Convention on the Rights of Child on the Involvement of Children in Armed Conflicts.*” 2002.

<sup>20</sup> *Rome Statute of International Criminal Court, 1998*, Article 8(2)(b)(xxvi).

<sup>21</sup> *Juvenile Justice Act, 2015*, Section 83.

<sup>22</sup> PM Nair, Geeta Sekhon and Others, “*A Handbook on the Legal Processes for the Police in respect of Crimes Against Children.*” (2018, Centre for Police-Studies and Public Security, TISS and BPRD) 172.

<sup>23</sup> Ananda S. Millard, “*Children in Armed Conflicts: Transcending Legal Responses.*” (2001) 32 *Security Dialogue* 187.



murdering, maiming, and torturing any civilian, particularly children, is considered a callous and deplorable violation of international humanitarian law and is condemned by the entire community. Therefore, murdering and maiming children, whether by state or non-state actors, during times of war or armed conflict is considered one of the ‘Six Grave Violations’ of the International Covenant on Civil and Political Rights.<sup>24</sup> All international humanitarian groups are dedicated to safeguarding children from such heinous acts of violence. According to the official statistics of the United Nations, around 12000 children were murdered and wounded by state and non-state parties across the globe in 2018, including hundreds of children murdered in Naxal-affected regions in India.<sup>25</sup>

Articles 6, 19 and 37(a) of the *Convention on the Rights of the Child* make the killing of children in armed conflicts a punishable offence. Article 6 guarantees the right to life to all children and requires the governments to take all necessary measures to safeguard children from any danger to their lives that they may face. Article 19 of the Convention on the Rights of the Child requires that all governments must protect children from all kinds of torture by any person or organization. Article 37(a) of the United Nations Convention on the Rights of the Child mandates governments to protect children from all kinds of physical and mental abuse by anybody.<sup>26</sup> In these three articles, all member states are required to safeguard children from any mental or physical abuse that breaches their dignity and inherent right to life, as well as any other forms of exploitation. Because their language is wide enough to include every element of a child’s existence, these articles are naturally relevant to instances of children caught up in violent conflicts. A war crime is defined as deliberately assaulting a known civilian-occupied location with the knowledge that such an assault would result in the death of a significant number of innocent persons under the terms of the *Rome Statute of the International Criminal Court*, which supplements these articles. It also forbids any assault on a populated place that is not adequately protected.<sup>27</sup> This concept forbids any assault on a civilian-occupied place in order to minimize the death toll of innocent people in an armed conflict, whether carried out by a state or non-state bodies.

Article 21 of the Indian Constitution guarantees the right to life as well as the right to personal liberty. These rights include not just the right to survive, but also the right to live in a manner that reflects appropriate dignity. All governmental entities, as well as almost all non-state

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<sup>24</sup> United Nations, “*Killing and Maiming*”, <<https://childrenandarmedconflict.un.org/six-grave-violations/killing-and-maiming/>>

<sup>25</sup> United Nations, “*Report of Secretary-General on Children and Armed Conflicts 2018.*” (UN.org, 2019)

<sup>26</sup> United Nations, “*Convention on the Rights of Child.1989*”, Articles 6, 19 and 37a.

<sup>27</sup> *Rome Statute of International Criminal Court, 1998.*

organizations, are banned from torturing someone, both physically and psychologically, under any circumstances. Killing or torturing someone results in the deprivation of his or her right to life. Even the state cannot be permitted to torture or inflict serious injury on anybody.<sup>28</sup> In accordance with this concept, the state is obligated to protect children from all kinds of torture, as well as from being maimed or killed in the case of a civil or military war.

These domestic and international legal penalties all compel member nations to take proactive measures in order to safeguard children from death and injury as a result of armed conflict. Despite the fact that India has put in place some legislative penalties in this regard, the country has not been able to fully safeguard children. In the meanwhile, innocent children continue to be brutally murdered by militaries as well as non-state actors like as Naxals and terrorist organizations in crossfires, air strikes, and armed assaults. According to a recent analysis of terrorist strikes in Kashmir, 400 youngsters have been murdered in the last 15 years, according to the report. There have been many reports of indiscriminate use of teargas and shells on civilians, with a significant number of children reported killed as a consequence. Attacks by terrorist organizations, as well as military operations in self-defense, are among the causes of these fatalities.<sup>29</sup> This kind of reporting reveals the heartbreaking fact that, despite many legislative protections, children are the most innocent victims of wars and armed conflicts throughout the world.

## VI. VICTIMIZATION OF CHILDREN BY SEXUAL ASSAULT

In instances of armed conflict, the goal of the factions is to destroy social cohesiveness, which may be accomplished most effectively by challenging the fundamental beliefs of any community. The preservation of women's dignity has been a central concept in most cultures since the dawn of time. This is especially true in developing countries. As a result, armed organizations are increasingly turning to rape as a means of spreading fear. There have been many reports of sexual violence in armed wars, mostly against children and women, but also against males in certain instances. This terrible crime, which exposes the powerlessness of the victim families, leads them to be compelled to sell their young daughters as sex slaves. Rape may also be used as a negotiating chip, which is the reasoning for its usage as a weapon. For the most part, sexual violence takes the form of repeated rapes, sex slavery, and even forced marriage.<sup>30</sup> Sexual violence is a frequent type of violence that is used to undermine social

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<sup>28</sup> *Dalbir Singh v. State of Uttar Pradesh*, (2009) 11 SCC 376.

<sup>29</sup> Rouf Dar, "Kashmir's Children are being Brutalised." (TRT World, 2018)

<sup>30</sup> Jo Boyden, Jo De Berry and Others, "Children Affected by Armed Conflict in South Asia: A Review of Trends and Issues Identified through Secondary Research." (2002) Refugee Center Studies and UNICEF.

values. Armed men often rape females in public places in order to establish terror and dominance over a community. This results in the girls becoming unclean (in front of the community) and, as a result, inflicting disgrace on their families and communities.<sup>31</sup>

Sexual assault is a common type of exploitation, particularly among young girls. It may last for years and result in a variety of medical issues, including HIV and AIDS, as well as death in extreme cases. However, one widespread misunderstanding is that sexual exploitation is mostly utilized as a weapon against young women. In Afghanistan, a practice known as “*Bachha Baazi*” or “dancing boy” is widespread, in which young boys are sold as sex slaves to wealthy landowners and lords.<sup>32</sup> As a result, in times of war and armed conflict, both boys and girls are equally vulnerable to the issue of sexual assault.

However, although most instances of sexual assault are carried out with force, in certain instances, young women and/or their families are willing to give themselves in exchange for their safety and the survival of their whole family. In many cases, young women are under the impression that by engaging in sexual activities with the leaders, they would at the very least guarantee their own survival. If any female attempts to escape from captivity, she is brandished and even disfigured in order to create terror in the hearts of all the prisoners and ensure that no one attempts to flee from the camp.<sup>33</sup> Many instances have been recorded in which girls and boys, while still in their adolescence, are first sexually exploited in order to create dread before being sold as sex slaves later on.

Several armed extremist organizations use human trafficking as a means of consolidating their positions of power. While there are instances in which females are purchased and sold for sexual pleasures, the majority of girls are purchased and sold for the purpose of “forced marriage.” It is a notion in which, in exchange for financial advantages, a strong nobleman marries a female who has been provided by armed fighters with the intention of allowing the girl to take care of the man’s household and also satisfy his sexual needs. Marriages of this kind are not recognized by society and, as a result, do not impose any social responsibilities on the parties involved.<sup>34</sup>

Such terrible acts perpetrated against the physical dignity and respect of children have been thoroughly addressed in a number of international treaties and conventions. In accordance with

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<sup>31</sup> Jeanne Ward and Mendy Marsh, “*Sexual Violence against Women and Girls in War and its Aftermath Realities, Responses and Required Resources.*” (UNFPA, 2006).

<sup>32</sup> United Nations, “*Sexual Violence Against Children.*”

<sup>33</sup> Dyan Mazurana and Kristopher Carlson, “*The Girl Child and the Armed Conflict: Recognizing and Addressing Grave Violations of Girls’ Human Rights.*” (2006)

<sup>34</sup> Olivier Peyroux, “*Trafficking in Human Beings in Conflict and Post-Conflict Situations.*” (2015)

the *Universal Declaration of Human Rights*, each and every person of the globe has the right to physical dignity as well as protection against cruel treatment.<sup>35</sup> The acts of sex trafficking, forced marriage, and public humiliation are all in direct opposition to the fundamental principles of humanity. Afterwards, under Articles 34 and 35 of the *International Covenant on the Rights of the Child*, the issue of sexual exploitation of minors is addressed. Article 34 of the UN Convention on the Rights of the Child requires all nations to safeguard all of their children from unnatural and illegal sexual practices. Article 35 makes it illegal to engage in any kind of trafficking, including sex trafficking and human trafficking.<sup>36</sup> According to Article 7 of the *Rome Statute of the International Criminal Court*, all crimes of sexual exploitation, human trafficking, and sex slavery are considered crimes against humanity and subject to international prosecution.<sup>37</sup>

As a result of these international rules, the Indian government has developed a number of very effective and broadly applicable legislation that impose very harsh penalties for such cruel actions. The Indian Penal Code mandates severe penalty for the crime of rape, with the severity of the penalty varying according to the heinousness of the act. Section 376 of the Penal Code punishes rape with up to life imprisonment,<sup>38</sup> which has been expanded in certain instances to include death penalties in certain circumstances. Section 372 of the Penal Code punishes the act of selling children for prostitution with a sentence of up to ten years in prison.<sup>39</sup> The Prevention of Children from Sexual Offences Act, 2012, is a much more protective and effective piece of law when it comes to safeguarding children from sexual crimes. As a result of this law, both boys and girls are protected against sexual offences, and those who commit severe penetrative sexual assault may be sentenced to up to 20 years in prison.<sup>40</sup>

Despite the fact that all of these laws have been successful, India still has a long way to go in terms of protecting its children from sexual crimes during times of conflict. However, despite these laws, young girls are still being exploited as sex instruments in armed conflicts today. Several Naxal women soldiers confessed that they had been subjected to numerous rape incidents when they were younger, when they were first apprehended. If the rape resulted in pregnancy, they were compelled to get an abortion without their knowledge or permission.<sup>41</sup>

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<sup>35</sup> United Nations, “*Universal Declaration of Human Rights, 1948.*”

<sup>36</sup> United Nations, “*Convention on the Rights of Child, 1989*”, Articles 34 and 35.

<sup>37</sup> *Rome Statute of International Criminal Court, 1998*, Article 7.

<sup>38</sup> *Indian Penal Code, 1860*, Section 376.

<sup>39</sup> *Indian Penal Code, 1860*, Section 372.

<sup>40</sup> *Prevention of Children from Sexual Offences Act, 2012*, Section 6.

<sup>41</sup> “*Women Naxals Reveal Instances of Sexual Exploitation*”, (Outlook Magazine, 2012)

## VII. ATTEMPTS TO ATTACK EDUCATIONAL INSTITUTIONS AND MEDICAL FACILITIES

An assault on schools and other hospital structures is another type of violation of children's rights in armed conflict. The neutral ground of schools and hospitals is believed to be a place where women, children, and injured individuals may find refuge. The Rome Statute, which was adopted in 1998, considers any assault on such properties to be a war crime.<sup>42</sup> Attacks of this kind often have two types of consequences: direct consequences and indirect consequences. Direct consequences may include bodily injury and the death of children as a result of such assaults. The indirect effect manifests itself in the form of insecurity among children, parents, teachers, and medical personnel who are unable to attend school or work in hospitals.<sup>43</sup>

By attacking hospitals, individuals in a certain region are denying themselves the most fundamental right to get medical care. In addition to the loss of human life, such assaults result in the destruction of the fundamental medical infrastructure of the affected region, which is particularly devastating. This causes medical services to be suspended until medical camps can be set up in the affected areas. Consequently, these assaults are in violation of the human right to basic healthcare services and readily accessible hospitals, which is guaranteed to all persons under the *Universal Declaration of Human Rights*.<sup>44</sup> In 2008, an assault of this kind occurred at the Cama and Albeless Hospital in Mumbai, India. Many individuals were murdered in this assault, and the medical personnel was kept prisoner for several hours. Several patients and members of the medical staff were murdered as a result of the terrorist assault.<sup>45</sup>

Several terrorist and Maoist groups have been claimed to have carried out assaults on schools in the past. In 2009, Maoists attacked Bhubaneswar, detonating bombs at two schools and one community Health Centre. The assaults were carried out by a total of 300 Maoists, who used firearms and landmines to carry out their assaults. These assaults terrified residents to the point that they refused to return to their hamlet unless they were provided with additional protection. There have been reports of hundreds of people dying in these assaults.<sup>46</sup> Because of such assaults on schools in Kashmir, school attendance has declined, as has the attendance of students and teachers, and several schools in the region have even been forced to close their

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<sup>42</sup> *Rome Statute of the International Criminal Court*, 1998, Article 8(2)(e)(iv).

<sup>43</sup> United Nations, "Attacks on Schools and Hospitals."

<sup>44</sup> United Nations, "Universal Declaration of Human Rights, 1949", Article 25.

<sup>45</sup> Amey Mansabdar, "45 Minutes at Cama" (The Week Magazine, 2018)

<sup>46</sup> Nageshwar Patnaik, "Maoists Blow up Schools and Hospitals in Sundergarh District." (Economic Times, 2009) <<https://economictimes.indiatimes.com/news/politics-and-nation/maoists-blow-up-schools-and-hospitals-in-sundergarh-district/articleshow/5370556.cms?from=mdr>>

doors. Terrorist attack prone areas are particularly susceptible to these tendencies, since families are hesitant to bring their children to school for fear of being targeted by a terrorist attack.<sup>47</sup> All of these studies demonstrate the negative effect that assaults on schools have on the lives of those who are targeted.

This kind of kid is robbed of his or her fundamental right to education. Article 24 of the *Convention on the Rights of the Child* establishes a universal right to education, which governments are required to offer to all children under the age of majority. States have a responsibility to provide an educational environment that is favorable to the requirements of all persons under their jurisdiction.<sup>48</sup> Article 21A of the Indian Constitution grants all children in the nation the constitutional right to education, and the *Right to Education Act, 2002* was enacted in order to implement this right. These laws are intended to ensure that all children in the nation have equal access to educational opportunities. As a result of the assaults on schools, parents are becoming less inclined to take their children to school.

In light of the negative consequences of assaults on schools and the use of schools as battlegrounds in armed conflicts, the Indian Army is forbidden from purchasing any property that is utilized for educational or therapeutic reasons. It is against the law for the Union to purchase any schools or hospitals in the name of impending domain for any reason whatsoever, according to the *Requisition and Acquisition of Immovable Property Act, 1952*.<sup>49</sup> All of these laws and regulations are intended to ensure that all children in the nation have the right to an education, without any exceptions or limitations. However, the goal of these legislations is not being achieved as a result of the widespread assaults on schools and hospitals with the intent of terrorizing the public.

### VIII. ACCESS TO HUMANITARIAN AID DENIED

According to the United Nations Security Council, the denial of humanitarian access to children is one of the six grave breaches that must be addressed immediately. The state or an international organization that seeks to offer humanitarian assistance, such as food and medication distribution, is considered to have committed a war crime if the armed group refuses to allow access to those seeking assistance. Even assaulting a group of humanitarian assistance workers is considered a war crime.<sup>50</sup> During times of armed war, marketplaces and basic supply

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<sup>47</sup> Joe McCarthy, “*Kashmir Crisis could Upend Education for Millions of Children.*” (Global Citizen, 2019) <<https://www.globalcitizen.org/en/content/kashmir-lockdown-education/>>

<sup>48</sup> United Nations, “*Convention on the Rights of Child, 1989*”, Article 25.

<sup>49</sup> *Requisition and Acquisition of Immovable Property Act, 1952*, Section 3.

<sup>50</sup> United Nations, “*Denial of Humanitarian Access*” <<https://childrenandarmedconflict.un.org/six-grave-violations/denial-of-humanitarian-access/>>

stores are closed to the general public. People do not always have a sufficient supply of the most basic needs on hand. The failure of armed organizations to deliver these essentials to the population, as well as to prevent any assistance for the provision of these essentials, constitutes a humanitarian violation of international law. Armed extremist organizations have used starvation of people as a war strategy in the past, and it continues to be used now in times of war and conflict. As a result of this combat strategy, starvation among youngsters, serious health problems, and a high number of fatalities as a result of a lack of access to medications are commonplace. This fact is utilized as a negotiating chip against governments in order to get the fulfilment of their objectives. States have been seen adopting unwelcome actions in the name of protecting the lives of innocent people, particularly children.

Several international treaties and laws establish that obstructing the delivery of humanitarian assistance is a war crime. In the event that a state or a non-state organization prevents the delivery of food and medication to innocent individuals who are being held as hostages, this will be regarded as a violation of international humanitarian law. The International Humanitarian Law acknowledges the reality that people, even in times of conflict, need food and medical assistance in order to guarantee their life. If an armed group is unwilling to accept aid from the state, it should at the very least allow for the delivery of basic needs by international organizations such as the Red Cross.<sup>51</sup> The act of obstructing access to individuals detained in a detention facility or assaulting a group of relief workers, on the other hand, is abhorrent and should be regarded as a crime punishable by imprisonment.

According to the *Fourth Geneva Convention*, a state is required to give humanitarian assistance to civilians, including children under the age of 15 years, even in territories controlled by an enemy. States that voluntarily limit the delivery of necessities as a war strategy would be considered to be committing war crimes under international humanitarian law.<sup>52</sup> Due to the fact that India is a signatory to this agreement, it is unable to use this warfare strategy. Some signatory nations, on the other hand, have been accused of failing to comply with this clause. For example, Amnesty International reported that the Myanmar Army employed this technique to prevent the delivery of essential humanitarian supplies to the Rohingya community, which was a violation of international humanitarian law. It was only later in the trial of Myanmar that the allegation of breach of International Humanitarian Law was brought against the country.<sup>53</sup>

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<sup>51</sup> International Committee of Red Cross, "Access for Humanitarian Relief to Civilians in Need." < [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule55](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule55)>

<sup>52</sup> *Fourth Geneva War Convention, 1949*, Article 23.

Muslim Mirror, "Myanmar Shelling Villages, Blocking Aid: Amnesty." (Muslim Mirror, 2019) <<http://muslimmirror.com/eng/myanmar-army-shelling-villages-blocking-aid-amnesty/>>

<sup>53</sup> Muslim Mirror, "Myanmar Shelling Villages, Blocking Aid: Amnesty." (Muslim Mirror, 2019)

As a result, the international community considers the violation of humanitarian rights to be a serious criminal offence and takes strong action against those who do it.

## IX. REHABILITATION OF CHILDREN AFFECTED BY WAR

A wide variety of different ways in which children are impacted by violent situations may be identified. Both physical and psychological consequences may result from these interactions. In addition to the loss of human life caused by armed wars, children are more likely to suffer from a variety of medical conditions such as hunger, HIV/AIDS, and serious injuries.<sup>54</sup> Psychological consequences include post-traumatic stress disorder (PTSD), distrust among individuals, lack of appetite, and loss of family, among other things. Each and every one of these problems places an obligation on the states to take proactive and healthy measures to aid in the healing and rehabilitation of all of these youngsters.

The *Fourth Geneva Convention* was one of the first agreements to establish a legal obligation on the part of the state to assist in the rehabilitation of children. Article 23 of the United Nations Charter mandates all nations to serve as neutral territory and to ensure the recovery of war-affected children, regardless of the nationality of the children. All governments are required to provide resources to ensure that all children get an education and have the opportunity to pursue their religious goals.<sup>55</sup> The Optional Protocol to the Convention on the Rights of the Child is a piece of law that supplements the Convention on the Rights of the Child. All member nations are required to participate in providing essential assistance for the physical and psychological rehabilitation of children who have been harmed by armed conflicts, according to Article 6.3 of the Convention (CRC).<sup>56</sup> Both of these international treaties impose a responsibility on all member nations to set aside their differences and cooperate together to aid in the rehabilitation and care of war-affected children and adolescents.

The Juvenile Justice Act, 2015, was enacted by the Indian Parliament on the basis of similar principles. Preamble to the Act says that it was enacted to guarantee the appropriate care of children who are in need of it by guaranteeing the appropriate treatment, care and rehabilitation of the children, all while taking a child-friendly approach to the process of care. Chapter 7 of the Act contains measures for the rehabilitation of all such children as well as for the provision of appropriate care for them. All children who are in need of care should be placed in a well-

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<<http://muslimmirror.com/eng/myanmar-army-shelling-villages-blocking-aid-amnesty/>>

<sup>54</sup> United Nations, “*The Impact of Armed Conflict on Child Development.*” <[https://www1.essex.ac.uk/armedcon/story\\_id/THE\\_IMPACT\\_OF\\_ARMED\\_CONFLICT\\_ON\\_CHILD\\_DEVELOPMENT.pdf](https://www1.essex.ac.uk/armedcon/story_id/THE_IMPACT_OF_ARMED_CONFLICT_ON_CHILD_DEVELOPMENT.pdf)>

<sup>55</sup> *Fourth Geneva Convention, 1948*, Article 24.

<sup>56</sup> *Optional Protocol to the Convention on the Rights of Child, 2002*, Article 6.3.



equipped institution, and the process of rehabilitation should begin in these institutions, according to Section 39 of the Act. If children show signs of wanting to leave these facilities, they will be provided with enough financial assistance to enable their reintegration into society. Finally, Section 43 requires the establishment of open shelters, which may be administered by the government or by non-governmental organizations (NGOs). Section 44 of the Child Welfare Act allows for the selection of a foster home for the benefit of the child. Section 53 of the Child Welfare Act requires that all foster care facilities offer a certain level of education and medical care.<sup>57</sup> All of these rules are concerned in great detail with the appropriate care that should be provided to children who have been impacted by armed wars.

The Central Government also maintains a Children's Helpline Number - 1098, which is in addition to legislative efforts. This is the country's first and longest-running hotline. Under this program, anybody may contact the hotline and request assistance for children who are victims of physical or mental abuse, human trafficking, or any other issue. The police are called in to assist such children, who are subsequently put in a child-care facility.<sup>58</sup> Such hotlines may be beneficial in the event of children who have been rescued from the clutches of armed extremist organizations, since socially responsible individuals may assist such youngsters by calling the hotline.

Despite the protections and facilities in place for children in need of assistance, rehabilitation is a difficult task in Indian society. The rehabilitation of children in India has not been a resounding success story. Some juvenile shelter homes have been accused of abusing the youngsters put in their care, and this has been documented. Several instances of children in shelter homes being mistreated physically and sexually were brought to light as a result of an investigation. It was discovered that children were being denied access to basic medical treatment, and that there had been numerous cases of child disappearances.<sup>59</sup>

Aside from that, monies given to shelter houses are not being used in an effective manner. Several instances of corruption have come to light, in which the manager of a children's shelter misappropriates funds intended for the children's care for his or her own personal gain. Furthermore, in India, in order to get even the most basic of government services, one must submit a large number of official papers. Children who have been rescued from war-torn

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<sup>57</sup> *Juvenile Justice Act, 2015.*

<sup>58</sup> Prachi Pinglay, "All About Childline 1098: How it Helps Children in Distress" (Citizen Matters, 2020), <<https://bengaluru.citizenmatters.in/bengaluru-child-helpline-1098-explainer-operations-data-child-labour-begging-rehabilitation-41975>>

<sup>59</sup> "Juvenile Shelter Homes in India have become homes of horror for many." (India News, 2016) <<https://www.india.com/news/india/juvenile-shelter-homes-in-india-have-become-homes-of-horror-for-many-1491516/>>

regions do not have all of these papers, making it difficult for them to get even the most basic of medical treatment. There are no fundamental rehabilitative services available in child care facilities, such as a psychologist or basic medical supplies.<sup>60</sup> All of these instances demonstrate that, despite having one of the world's largest economies, India is still unable to guarantee the appropriate reintegration of children into society. Despite a number of legal protections, children who have been subjected to abuse are still not secure in society, even after being rescued from their situation. All of these circumstances necessitate the establishment of a state-sponsored system to supervise the operation of shelter houses and guarantee their appropriate functioning, as well as the appropriate care of the children.

## **X. MOVING FORWARD WITH REHABILITATION**

Though, as previously said, India has many legal protections in place to prevent children from being harmed by armed conflicts, there are many additional measures that India may and should take to guarantee the protection of children in armed conflicts and even their appropriate rehabilitation. Birth registrations should be made mandatory, and proper inquiries should be conducted before enrolling anyone in the armed forces, regardless of whether the forces are state-run or not. This will ensure that enrollment of children in armed forces, whether state-run or not, is completely prohibited at all times. The government should then enlist the assistance of UNICEF and other non-governmental organizations to aid in the assessment of the condition of children in Naxal and Terrorist-controlled regions, among other things. Children should never be imprisoned under any circumstances, not even by the army. Children who have been enlisted by armed organizations should be provided with appropriate job possibilities, which will allow for their proper rehabilitation.<sup>61</sup>

In addition to these measures, the government should use a community-based approach to the rehabilitation of children who have been impacted by conflict. Training should be provided to military and paramilitary personnel on topics such as child protection legislation, how to cope with children who have been sexually abused, and other pertinent topics. It is also possible for the government to host certain discussion programs to educate the public on the proper approach to handle abused children. Then, via education and awareness efforts, the societal stigma associated with rape should be lessened.<sup>62</sup>

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<sup>60</sup> "The Sham of Rehabilitation: Many Child Sex Trafficking Victims are pushed back into Abuse." (News Minute, 2020) <<https://www.thenewsminute.com/article/sham-rehabilitation-many-child-sex-trafficking-victims-are-pushed-back-abuse-122305>>

<sup>61</sup> Child Soldiers International, "Report to the Committee on the Rights of child in advance of India's initial report on the Optional Protocol on the Convention on the Rights of Child." (2013).

<sup>62</sup> Ghada Kachachi, "Working with Children affected by Armed Conflict: Practical Protection Work During

A significant role in the rehabilitation of children is played by child shelters. Personnel who have the requisite cultural and emotional competency to cope with children who have experienced trauma, among other things, should be assigned to these shelter houses. The staff-to-resident ratio should be high in order to ensure that children get the necessary care they need to make a full recovery from their medical conditions. Cultural and sporting activities should be encouraged for children so that their lives may return to their previous state of normality.<sup>63</sup>

It is the responsibility of the state to protect children to the greatest degree feasible, and this obligation must be met to the greatest degree feasible. It is impossible for a regular human being to comprehend the impact that war has on children and their families. The mental scars left by the tortures they have endured will last a lifetime for them. A person living a normal life would never be able to comprehend the agony a girl goes through after being raped in public and by many people, or the anguish a kid goes through after murdering his buddy as part of training. We as a community cannot take away the agony and suffering that these children have through, but we can at the very least assist them in their reintegration back into society. At the very least, we can make children feel safe and comfortable while also assisting in their growth. Despite the fact that we are making significant progress, there is still more work to be done.

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*Darfur Crisis in Sudan.*” In Myriam Denov and Bree Ackesson ‘Children in Armed Conflict.’ (2017) Columbia University Press.

<sup>63</sup> Milfrid Tonheim, Ilse Derluyn and Others, “*Rehabilitation and Social Integration of Asylum-Seeking Children Affected by War and Armed Conflict.*” (2015) Centre for Intercultural Communication.