

History of Child Rights Protection in India

Report of the Meeting on 11th August 2012

Centre for Health and Social Justice

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Welcome and Context

Dr. Abhijit Das welcomed all the participants and explained the purpose of the meeting: CHSJ held a Consultation on 15th June 2012 on the issue of Child Rights. CHSJ has been working with men ever since its inception but we have been working with men to fulfill other domains of rights, as men have long been implicated as the problem. We want to explore how we can change this and include men in the solution. We have been working for the past many years with men around the issues of gender. First we looked at gender only as fulfilling what we thought of being complimentary to the women rights movement and being complimentary to efforts around violence. Through our work we realised that sexuality and violence are key issues for men. We realised that men as a group need special attention.

During the national consultation on the role of men in the protection of child rights, held on 15th June 2012, we realised that men are entering new domains which in themselves are not very clear. Are these issues of women's rights or child rights? There are confusions in some areas. When we look at declining sex ratio, should we look at it from the child rights and girls' rights perspective or from the perspective of violence against women? It has always been looked at as female feticide. When we focus on reproductive health, should we protect the right to abortion? In Uttar Pradesh, we have seen that at the pretext of trafficking, young women's autonomy is often under threat. Several such confusions remain in our work. There are confusions around sexual consent, sexual autonomy and sexual abuse. There are also laws around these- Article 377 has been made. It has been argued that if we do away with the Article 377, then we do away with a mechanism that deals with child abuse and therefore, there is a need to establish laws that decriminalize consensual sex between adults. We also need to check what we understand with the age of consent.

With these confusions, when we started our work, we hoped to get some clarity from people who have been working on these issues for a long time. We also wanted to see the genesis of the discourse around child rights and the continuum between autonomy and protection. Is the child a dispensable item, or a person who should be taken care of, or a person who is autonomous and with rights, which seems to be a late 20th Century idea? With these in mind, this meeting has been called to discuss the history and genesis of child rights work in India.

Historical Construction of the child

Who is the Child

The child seems to be a historically new concept and perhaps the concept of the father is also new. In referencing the child, we would perhaps have to use the term person or citizen- we need to see the child as being entitled to rights from the time of birth. However, the term citizen is in relation with the government, even before this, a child as a person has a relation with the parents and they have a role to play. If we look at the child legally, our Constitution is a basis also. National Policy for Children is being finalized right now and is based on the policy of 1974. It has also defined who a child is, and there is recognition of the earlier confusion around age- it now considers every person under 18 to be a child.

The perspectives can be historical, nationalistic, parental and citizenship focused, but here we need to address who the child belongs to.

Child rights around the world

Ramakant Rai stated that historically, the child has been viewed in four ways- a) Biologically- who does the child belong to, where will the child live and with whom, b) Identity- does the child have an identity? In Indian mythology we see the example of Kansa who killed several nephews to escape from his prophesied death. There are also stories in Europe of disabled children and girls being sent away to die, c) Care and Protection- Especially from the time of Magna Carta, which limits the power of the kings as that was a period which witnessed excesses against children. As the Industrial Revolution and the Manchester mills grew, the story of Oliver Twist also raised several questions, when the conditions of children came to light, especially as chimney sweeps, where many children died, d) Rights- After the world wars and the Nuremberg trials, the horrors of the Nazi concentration camps also revealed how children were treated. The League of Nations led to the creation of the United Nations and UNICEF. The UNCRC (United Nations Convention on the Rights of the Child, 1989) was ratified by several nations, however not by the US. The Royal Commission came to India in 1929 and raised questions around practices of sacrificing children, child marriages, and condition of widows. Globally the issue of child was raised more during the last 60 odd years. In 1919, after the formation of the ILO, there was recognition of child labour and a definition emerged. The Ain-e-Akbari describes how the first carpet went from India to the East India Company. The carpet industry picked up in Kashi and Bhadohi during Akbar's reign as travelers from Iran set up looms here. Later when the carpet industry was in the hands of Indians and Pakistanis, we did not have the expertise to make carpets in the quantity demanded by the European markets. The carpet industry which emerged from the huge demand used child labour to keep up, with children being brought from the flood hit and drought hit regions as far as Bihar. Several laws around child rights in India came with the reference of the carpet industry.

When children are rescued from child labour, the law states that the owner of the industry must be fined Rs.20000/- and imprisoned. The data says that the rate of prosecution is 7% and the law seems to be eyewash. Another issue is that the government defines these children as child labour. We have a problem with this identity as the term 'labour' presupposes some conditions. It presupposes that the labour has the right to negotiate the terms of work, the working conditions and the wages. In the case of child labour, the child is never in a position to negotiate. All their work is imposed by the employer. There is no child labour, there is child servitude, and the children are working as slaves.

Prior to 1981, there is no official data of child labour in India. After 1981, the government started doing surveys with the term 'economically active children'. In 2001, the government has stated that there are 1.26 crore children who are economically active. However, the economically active children are from work spaces which are approved. If there are children in forced labour, if there are children in prostitution, if there are children who are pickpockets or children begging on the streets- they have not been enumerated by the census. The government is in fact stating that the census of 2001 shows that child labour is in fact decreasing and has gone down from 1981 census. However, at the same time the number of children in the unorganized sector has gone up.

The Census of 2001, states that 25.13 crores school going children between the age of 5-14 years. Justiciable fundamental right to education where every child should be school. The recent data shows that the number of school going children is around 19 crores. Where the remaining 6 crore children are needs to be questioned. We have the largest number of out of school children in the world and this issue needs to be acknowledged and raised.

Nationalism and the child

Dr. Sanjay Srivastava stated that during the 19th and 20th centuries, there was little interest in child rights, more in nationalism- the interest in children was also from a nationalist perspective. We can see children's stories like Amar Chitra Katha, Subhadra Kumari Chauhan wrote stories but not for children. The stories were not for entertaining children but how good children will benefit the nation state. A similar debate could be seen for Sati where people argued whether or not the custom was originally part of the Hindu tradition but not what impact it would have on the women. A lot of emphasis has been paid on ideal children, ideal women, ideal mothers. Very few people were interested in entertaining children- Premchand and Rahul Sankrityayan being among them.

Another point of interest is that nationalist ideology feels that children and sexuality are unconnected, which we know to be untrue. If we want to understand child rights, we must stay away from nationalistic ideologies.

Runu Chakravorty stated that we mustn't accept that all that is true for North India is true for all. Rabindranath Tagore and Gijubhai Badheka wrote for children but they didn't become mainstream.

The identity of the child

Prabha expressed that when we say that children don't have an identity, the plight of disabled girl children is especially worse. When we talk about the age of consent and till what age should a person be called a child- will it be 18 for all issues? We also have to consider the evolving capacities of children- no two 16 year old children are the same and this depends on the contexts.

Dr. Sanjay Srivastava explained other confusions- what is the age for youth as defined by politics? The youth wing of political parties has sometimes got people up to the age of fifty years. Sometimes, all unmarried people are considered children. Sometimes all women are called children- there is infantilised. Disabled people are also sometimes considered child-like. Unmarried women especially face this problem as they are not allowed to discuss reproductive health as they are "children" and expected to know about these issues.

When we talk of child rights, there should first be an acceptance of the identity as previously the child has always been seen as an extension of society and family or an adult in the making. The issues of housing, protection, violence are also child rights concerns.

However, can the child be seen in isolation?

Child nutrition and child education are issues that the state is concerned about but the perspective is not clear. The participation of children is crucial- children are able to tell us in their own way what their issues are. It is important to create spaces to hear children's voices and hear their depictions of issues. It will depend on who is analysis and interpreting these voices and this becomes important as there can be multiple interpretations.

Discrimination and the child

The child often gets he-ised. There is also not enough gender sensitization among the child rights group. When we talk of representation of children, we must remember that usually the articulate children from a certain class might be representing. There is a difference between desires and what is desirable as the latter implies that we create a balance between our desires and those of others. Do we have adequate theory or evidence that says that children are in a position to make those balanced decisions themselves

or that children will present the data and that adults will be able to interpret it. In such a case however, we are taking children only as data points and we are making a judgment based on our own analytical framework.

Political will

The UPA 1 government had said that we will be spending 6% of GDP on education and that by 2012 we will universalize early childhood care and education. However, when questions were asked in the parliament in the last session, the government said that it doesn't have enough funds. Slowly a case for public private partnership is being built. Some questions have to be asked from the government- the accountability must be demanded.

There is no political consensus around child rights and this is not considered an important issue. Is this because children are not represented politically as they are not in that age bracket and because that maturity of thought is not there? Our representation of child rights is based on my understanding of what is best for them. Even when we talk of our understanding of children, is it based on our interaction with them or through an intellectual discourse? We don't have to be disabled to work on disability rights, similarly we can represent child rights. Also, other civil society organisations working on issues like land rights need to build in a component of child rights in their work.

The Sanctity of the Indian family

The fact that we don't have a men and child development ministry but a women and child development industry says something about the way family politics is being played out. In the case of the Norwegian child custody incident, the way the case was represented by the Indian media displayed the notion that there is something very sacrosanct about the family. It displayed the notion that the Hindu family is the best way to bring up a child.

The Role of the State

What should the role of the state be in protection of rights? Do we want state interference? We do want state interference when the Khap panchayats decide 13 as the age of marriage of girls or when a parent says that their child should do begging as there is no food to eat. The State however steps in where there is no need- a couple of years back 18 states banned sex education in schools. The people, the children and the parents should have decided this.

However, is it acceptable to do away with sex education if the parents so say. We are still make decisions on behalf of the children so really who is better- the state or the parents? We also have double standards when it comes to how mature a child is. A three year old child knows enough to state what they want to eat, which dress they want to wear, but they don't know other things. A ten year old child cannot be trusted when they don't want to go to school but all the cattle can be left to them for grazing. We then need to impart life skills to the child and also need to sensitise the state, parents and the community to look at the child from a different perspective.

We need a decentralized mechanism for monitoring issues of child rights- various mechanisms at various levels to monitor with legitimacy are needed. We cannot centralise everything on the state.

Why should we talk to children

When we talk about the participation of young people and children, and we ask them what they want, it doesn't mean that we are then going to give what they want. We need to speak to young people to know what their issues are, what information they need and what are their concerns. Our approach needn't be to ask what they want and that we will give you exactly that. They have a lack of information and their primary sources of information are other children who also have incomplete idea especially about sexuality.

Other people who interact with children need to be part of this forum- we need to involve children and parents also.

We think of the state as something out there, but we are also the state as we try to influence policy. Childhood is a transitory phase and adulthood lasts a much longer time. Why do we want to understand about children or listen to them as the childhood will not last too long? Are we trying to make better adults and what kind of adults? What is the broader socio-cultural context in which this interest in children and childhood is there? Our interest is not just the child but how will I ensure that I have a better relationship with this person in the future. We both will share each other's concerns. We will have better dialogue. While it's true that for any individual any stage of life is transitory but there is universality of that stage. Every life stage is very important and there must be recognition of that and that children as a category must be addressed. Maybe the perception of the older group has also undergone a change, earlier they were thought of as the 'wise people'.

At one level the aim for any engagement is an egalitarian dialogue. From the ethical perspective it is important to account for and engage every group- be they children or older people.

Vision for the future

There has been a pressure to develop a responsible citizen and there is a question on how much should we engage the present for the future. Secondly, there is a conflict between discipline and ensuring the future- earlier the focus was to educate the child even if it took corporal punishment, then corporal punishment was done away with and we say that the child should be educated even if it requires us to scold them, and now more recently we say that the child should be educated and we must be loving and patient in order to do this. Focus may have changed from corporal punishment to scoldings to loving but focus has not shifted from educating them.

It is interesting to note that in ensuring the future, our vision of the future has not changed, we are just willing to do more things differently to ensure that future. All groups- parents, teachers, communities, NGOs, religious groups are very interested in children. However the best interest of the child is not clear. Even as parents if we say that I have the best interest of the child in mind, we have to question what that interest is. Is my interest that the child will take care of me in my old age? What is our definition of a good human being; sometimes we are not concerned if our child mistreats others as long as the child takes care of me.

What do we see education as – schooling? The purpose of education is much wider and so as a society how have we defined education? I want my child to have the best education which is not necessarily schooling, however the right to education will force children in a school till the age of 18 years.

Sexuality and abortion rights

We are considering the rights of the child from the time of birth and we need to also ask to whom the womb belongs; does it belong to child or the mother or women as a whole or others? Women should have the first right. Women are not born with a child, they are born with a womb and they have the first right over the womb. Also, sometimes women are told not to be selfish in wanting just one child; that they must think of the child and the child's best interest and give the child another sibling to play and grow up with. Is it the child's right to have a playmate in the form of a sibling or is it the woman's right not to have another child? When do the rights of the child start- from conception or from birth? Does the child have the right to pre-natal care and better nutrition in the womb is it the woman's right to have proper pre-natal care and better nutrition during her pregnancy? Is the woman entitled to proper nutrition only during pregnancy; the child survival depends on this but the woman's survival throughout her life depends on proper nutrition. Does the fetus belong to the mother or the society; those killing female fetuses argue that the fetus is that of the society. Is there a child inside the womb or is that a fetus? When we talk of feticide and we link it with homicide or genocide then we are calling it murder and this can be problematic.

We want to give primacy to the woman's choice however women who want to abort their pregnancy are asked for reasons- whether they are medically fit or not and whether they feel that having the child will be a barrier to their careers.

There is sometimes a sense where a woman's body is seen as a resource to be made maximum use of. If there is a womb, it should bear a child. What is the purpose of a womb otherwise, what is the purpose of being a woman otherwise? This perspective is also partially the reason behind the hysterectomies. When the woman has had two children, there is a sense that everything that was needed from the resource has been taken out and now this resource is not needed. It is no longer a productive resource. While we argue that the decision to have the child lies with the woman, it still is a layered proposition. It has confusions and dilemmas; there is a process of decision making and there is no space for articulation of confusions around this decision. While we will stick to our stand of this being a woman's decision, we are very sweeping in our stand and letting the woman negotiate all consequences and processes of her decision.

Our laws regarding suicide and our stand on abortion are perhaps influenced by Christian theology, where the right to life belongs to God or their earthly representatives- the monarchy or the State. In the Indian context abortion was allowed but under certain circumstances. There is a problem with all the reasons due to which abortion is accepted or permitted. When the woman is allowed to abort it is not because it was her right; there are many conditions attached. A lot of our actual lives are due to the meta philosophies derived through religious ideas, especially when countries deny aid to other countries which have abortion rights. It is not as if abortion is only linked to pro-life; even where abortion is allowed, there are conditions and moralities attached. However, at the same time, it is relatively easy to get rid of the female fetus but not the male fetus. We have also seen from the child rights groups a needs conflation of the girl child with the female fetus. There is also a problem with the articulation of 'save the girl child' as we need to immediately ask- save the girl child for what? Are we actually interested in nurturing and caring for the girl child or is our focus on finding brides for all the men? The further problem with such an articulation is that it reduces men to sexual beasts who need the women around and women to providers of that need.

Can men bring women from other states to their own? If we object to this, where is the discourse around men taking away women to other countries. When the NRI community does this we do not

object and this is a class issue. The women who migrate in this way have very few land rights but we also accept that women in any case have limited land rights. Secondly, the women who are migrated are usually minor girls. In such a case is our concern limited to the trafficking of minors or are we concerned about child marriages as such.

Summary

The meeting ended with an acknowledgement of the confusions that exist over the child rights issues. All members expressed their interest in further continuing the dialogue and the need for other similar discussions in the future. Dr. Abhijit Das thanked all the members participating.

List of Participants

1. Ramakant Rai, NCE
2. Sharda Rai
3. Runu Chakravorty
4. Sanjay Srivastava, IEG, Delhi University
5. Renu Khanna, SAHAJ
6. Madhumita, HAQ- CRC
7. Prabha, TARSHI
8. Meenkshi Shukla, CHETNA
9. Virendra Rai, CHSJ
10. Leena Uppal, CHSJ
11. Mahendra, CHSJ
12. Lavanya Mehra, CHSJ
13. Pratibha D'mello, CHSJ
14. Shreeti Shakya, CHSJ
15. Satish Kumar Singh, CHSJ
16. Abhijit Das, CHSJ