

Blind Mind: An Analysis on Education Rights Infringement of Child Soldiers

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Abstract— *An advanced mental attitude generates a successful human being. Such a strong mentality originates with education which is subjected to broad interpretation. Moreover, childhood is where the intellectual development of a man begins. Thus education has been recognized as a fundamental human right to which every child shall be entitled. However, there are instances where children are either recruited in the armed forces or allowed to take part in hostilities. This involvement of children can be present in armed conflicts of both international and non-international nature. In light of that primary research objective is to assess the laws which are to safeguard the right to education of child soldiers. To determine whether a child being a soldier is deprived of right to education as a human right and whether the protection guaranteed under International Humanitarian law and Human Rights law is implemented, are recognised as secondary research objectives. In achieving the research objectives, qualitative method and quantitative method of research would be pursued. Primary sources of law such as statutes, case laws and secondary sources of text books, journal articles, and web articles would therefore be referred. The study would also employ statistics under the quantitative method. Although it seems that issues of armed conflicts are completely dealt with international Humanitarian law it is unforgettable that human rights law intends to safeguard the rights of individuals both at war and peace. Therefore, it follows that educational rights infringement of child soldiers is contrary to both International Humanitarian law and Human Rights law. Furthermore, it is to be noted that such infringement leads to blindness of mind where the particular child's mentality would not be advanced through education. Thereby thousands of blind minds would result in a tainted society to which no contribution is made by educated men and create a world with no humanity.*

Keywords— **Child Soldier, Right to Education, Armed Conflict**

I. INTRODUCTION

A child below 18 years of age who has been recruited or used by an armed force or armed group as a combatant, cook, concierge, spy or sex slave is defined as a 'child soldier' (Paris Principles on the Involvement of Children in Armed Conflict, 2007). In early January 2016, UNICEF estimated that 300,000 children younger than 18 are

currently trafficked to serve in armed conflicts worldwide. Since 2002 until the end of the conflict, nearly 7000 children were recruited as child soldiers in Sri Lanka. At the end of the conflict in May 2009, a total of 594 children aged between 12 and 18 years surrendered to armed forces. This position of child soldiers is visible more particularly in the ongoing Syrian Civil War. Younger children some as young as seven are being recruited by the parties to the conflict. More than half of the combatants of the Syrian conflict are under 15 years of age as verified by UNICEF in 2015. They are paid relatively up to \$400 per month for being part of hostilities. These facts assert children are exploited forcibly in armies of states, paramilitaries, rebel groups and there are other vital factors that result in children becoming involved in armed conflicts voluntarily. One of such encouraging factor to join armed forces can be poverty. Discrimination is also a key motivating factor. Discrimination especially on ethnicity and religious identity is powerful in the armament of entire community including children. When children witness their parents are being killed and sisters being raped, they might join out of a feeling of revenge (UN Office of the Special Representative of the Secretary General for Children and Armed Conflict). This expresses that lives of children are endangered and their childhoods are sacrificed due to various reasons when they join the armed forces. Therefore, guaranteeing their rights, particularly the right to education has become momentous since they are not truly entitled to such rights in association with armed conflicts.

II. METHODOLOGY AND EXPERIMENTAL DESIGN

The research would employ qualitative analysis of primary and secondary sources. Primary sources of law such as statutes, case laws and secondary sources of text books, journal articles, and web articles would therefore be followed. In light of that Conventions and Declarations in the fields of International Humanitarian law and Human Rights law would be of great concern. Further the study aims at focusing on National legislation in respect of right to education. In conclusion, it is to be determined whether there is any violation of right to education of child soldiers.

III. RESULTS

Child soldiers who are included in the category of children are entitled to right to education equally as other children. It is unfortunate they are forced by the armed groups to be part of hostilities. Nevertheless there are occasions where children engage in armed conflicts voluntarily due to their

negative mental attitudes towards the opposition group, economic instability in their families or poverty, abuse and discrimination. Despite the fact of voluntariness and involuntariness children are deprived of right to education which is recognised as an inherent human right when they take part in hostilities. Hence, assurance of child rights protection is essential. Principally, United Nations Convention on the Rights of the Child 1990 (Hereinafter referred as UNCRC) attempts to ensure Protection of children in all aspects of their lives including education. In addition, Geneva Conventions (1949) and its Additional Protocols (1977) guarantee the protection of children particularly in armed conflicts. When focusing on Municipal laws it is evident that 1978 Constitution of Sri Lanka provides some indication of right to education in the Directive Principles of State Policy (Article 27). However, it is submitted there are lacunas in the prevailing legal framework to be filled and much concern is required in respect of education rights of child soldiers.

IV. INTERNATIONAL HUMANITARIAN LAW AND HUMAN RIGHTS LAW

A set of international rules which intends to solve humanitarian issues emerging from international or non-international armed conflicts is known as International Humanitarian Law (IHL). It safeguards persons and property that are affected by an armed conflict. However, the right to use methods and means of warfare by the parties to a conflict of their own choice is restricted by IHL. The four Geneva Conventions of 1949 and their Additional Protocol I of 1977 are considered as key treaty sources of IHL applicable in international armed conflict. With regard to the armed conflicts of non-international nature, the relevant sources are Article 3 common to the Geneva Conventions and Additional Protocol II of 1977. International Human Rights Law (IHRL) is a set of international rules and inherent entitlements to which every individual belong as a consequence of being human. Recent treaties contain provisions of both IHL and IHRL though they had a distinct development in the history. The Convention on the Rights of the Child, its Optional Protocol on the Participation of Children in Armed Conflict and the Rome Statute of the International Criminal Court are some of such examples. (International Committee of the Red Cross, 2003). In each case, humanitarian law applies as a minimum whenever human rights law does not apply and vice versa (International Review of the Red Cross, 2008). In concerning the study, children are considered as a special vulnerable group because of their biological differences and identified as protected persons. This meaningful recognition has been acknowledged by IHL of which prime objective is to strike the balance between military necessity and humanity. In other terms Humanitarian Law aims to mitigate the human suffering caused by war or as it is sometimes put to 'humanise' war (Kalshoven & Zegveld, 2001). It is required therefore the basic legal instrument of international Humanitarian law, Geneva Conventions (1949) to be fully equipped addressing the rights of children including right to education particularly

in the event of armed conflicts. In addition, it is remarkable the law of armed conflict has been supplemented by various International Human Rights Law instruments which seek to promote and protect human rights.

V. DEPRIVATION OF RIGHT TO EDUCATION

International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises right of everyone to education (Article 13). If everyone is entitled to the protection of education it is undeniable a child can enjoy such right which is significant as a socio-economic human right. Thus, a Child being deprived of right to education lacks legal protection of a fundamental human right. It implies that a soldier who falls within the age limit of a 'child' is equally entitled to right to education. Before assessing whether right to education of child soldiers is infringed it is required to concern on legal recognition of a child, a child soldier and whether their right to education has been acknowledged by the law.

A. Legal recognition of a child

The United Nations Convention on the Rights of the Child 1990 (UNCRC) is the parent international instrument to define the term 'child'. In terms of its Article 1, 'child' means every human being below the age of eighteen years. Sri Lanka has ratified this Convention on 12th July 1991. As per the interpretation of National Child Protection Authority Act No.50 of 1998 'child' means a person under 18 years of age (Section 39). This articulates Sri Lanka has incorporated international law in domestic legislation thus bound to follow provisions of the Child Rights Convention. African Charter on the Rights and Welfare of the children (ACRW) has a similar identification defining 'child' (Article 2). Marasinghe (2005) remarks that a child's entitlement to various rights recognized in international law depends on the stages of his or her childhood. Right to life, freedom from torture, inhuman, degrading treatment or punishment are some of the rights enjoyed by the child irrespective of the stage of childhood. Right to education, right to privacy, freedom from expression, association, conscience and religion which are empowerment rights or participation rights may vary according to the stage of childhood. Her view establishes that in order to exercise the said rights by the child, his/her stage of childhood or age group forms a significant factor. Accordingly it is clear right to education is based on the aspect of age. The Human Rights Law treaties stipulate any person below the age of eighteen years shall be legally recognized as a child. However, it is unforgivable Geneva Conventions which are the fundamental instrument regarding armed conflicts are not precise in defining a 'child soldier' which falls within the term 'child'. This gap was filled to a certain extent by its Additional Protocol I and II in 1977. By specifying an age limit on recruitment of children to armed forces and on participation in hostilities, the optional protocols have improved legal protection of child soldiers.

B. Child Soldier

The term 'child soldier' is not defined in the Geneva Conventions (GCs). Although it is not directly defined even in the Additional Protocol I (AP I) to the GCs, its Article 77(2) states that the Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest. This provision seeks to ensure the prevention of child participation in hostilities corroborating a minimum age in that regard. As per Article 77(3) of AP I, if in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article whether or not they are prisoners of war. However, Article 4 (3) of AP II articulates children shall be provided with the care and aid they require and in particular, children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities. This provision deals with the recruitment of children in non-international armed conflicts. It is in precise terms that a child can be recruited in armed conflicts only if he/she has completed fifteen years. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2002) raises the issue of age for possible recruitment of persons into armed forces and their participation in hostilities. The protocol contributes effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children. According to Article 2 of the Protocol States Parties should ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces. This recognizes the interpretation of IHL principles in the sphere of the Child Rights Convention. Furthermore, while the Human Rights mechanism and Humanitarian Law do not define the term 'war crimes', Rome Statute of International Criminal Court (1998) expresses such term which is related to International Humanitarian Law. In that regard, International Criminal Court has recognized child participation in hostilities as a war crime. This seems as a progressive development which could not be so achieved by Geneva Conventions. Consequently, it is affirmed the minimum legal age for recruitment and use of children in hostilities is 18 under Human Rights law and recruiting children under the age of 15 is prohibited in International Humanitarian Law.

C. Education as a human right

Right to Education is subjected to broad interpretation. It may include moral and religious education, right to attend school regularly, primary education and higher education. Universal Declaration of Human Rights (UDHR) in its Article 26 provides that everyone has the right to education and

elementary education shall be compulsory. Although UDHR is the basic international legal instrument on human rights its non-binding force as a Declaration has made its subsequent treaties significant. As a result, these provisions on right to education have been elaborated in its subsequent international treaties in detail. As discussed above ICESCR states education is a right that is to be exercised by everyone without discrimination (Article 13). According to Article 28(1) of CRC State Parties shall recognize the right of the child to education. Further in its subsection (e) it provides they shall take measures to encourage regular attendance at schools and the reduction of drop-out rates. This is identified as a significant provision since it makes state parties responsible for regular schooling of children. It is understood that each state party must therefore be responsible taking measures to ensure regular attendance of child soldiers at schools. This seems impractical when children are recruited to armed forces. Therefore the best solution would be not to recruit them in such groups and allowed not to take part in hostilities until they arrive at a certain age. The law should be amended as such expanding the age limit of a 'child' in its terminology. Because secondary education goes until 20 to 21 years to which a soldier would not be clearly permitted in terms of Article 77 of AP I of Geneva Conventions. Children shall receive an education, including religious and moral education as per AP II of Geneva Conventions (Article 4.3) The Constitution of Sri Lanka does not expressly provide right to education in the Fundamental Rights Chapter. However it makes reference to education rights in the Directive Principles of State Policy (Article 27(2)(h)). It states the objectives of establishing a democratic socialist society in Sri Lanka which include the complete eradication of illiteracy, the assurance to all persons the right to universal and equal access to education at all levels. In practice, after the period of war, UNICEF worked with the Sri Lanka Government to ensure that all of the children were treated as victims and not persecuted. UNICEF also supported the Government to formulate the legal framework for the rehabilitation of child soldiers and worked with the Ministry of Justice and Commissioner General for Rehabilitation to provide education, recreation and vocational training as well as psychological support to help them deal with their past.

VI. JURISPRUDENTIAL ASPECTS

In the case of *Golak Nath v State of Punjab*, the Indian Supreme Court held "fundamental rights are the modern name for what have been traditionally known as natural law". When guaranteed and enshrined in a written Constitution the natural rights are called fundamental rights, because they are guaranteed by the fundamental law of the land. The rules of natural law are of universal application, therefore natural rights also live in every human being in all ages and in all times (Vadkar, 2000). Consequently, right to education can be recognized as a natural right. The jurisprudence behind the right to education was found to have had a long history. According to Raphael (1976), education means of bringing in leaders.

Raphael's account reflects the jurisprudence behind the right to education to be a way of forming future leaders, a manner by which the future is determined, and a way of creating equal opportunity in a democratic society. Education gives a path way to the citizens to take part in the activities of the state (Elvis). In addition, the relationship between law and society was explored by Sociological jurisprudence. According to Vadkar (2000), Sociological thinkers are of opinion that law is meant to progress the society by social actions. It is only possible when all human rights are observed and preserved in society. Rosco Pound recognizes this as 'social engineering' (Gardner, 1961). In terms of this concept securing human rights protection is essential for the proper and smooth functioning of the society, if not society cannot progress. When combining the views of Raphael and Vadkar it is clear right to education which is a fundamental human right is indispensable to create a democratic society on the basis of equality. Thus, when each individual is entitled to education rights it will ensure the society's proper functioning.

VII. CONCLUSION

The aforesaid facts affirm that lacunas in the Geneva Conventions have been supplemented by Human Rights law treaties. Since there was no reference to the protection of children in armed conflicts in four Geneva Conventions, the first additional protocol to the Geneva Conventions came into effect in 1977. However, the ambiguity in its words in respect of child soldiers resulted in another protocol. As per AP I, the minimum age for recruitment of child soldiers was eighteen years. There was a doubt whether it was fifteen years or eighteen years due to the vagueness of its terminology. By the effect of AP II the doubt was cleared up to certain extent. Nonetheless, it was observed there is a contradiction between the age of a child recognized under the Human Rights Law and the recruitment age of a child soldier. A child shall be entitled to the full protection of his/her rights until the age of eighteen years in terms of Human Rights Law. When a child soldier is recruited to armed forces in a minimum age of fifteen, he/she is deprived of the protection of such essential human rights. Therefore it is suggested to adopt a new Convention in the International Humanitarian Law domain rather than filling in the gaps by Human Rights law Conventions. On the other hand it is to be noted the International Humanitarian Law and the Human Rights law have mutually agreed to be gap fillers. Furthermore, the right to education has been recognised as a fundamental human right which should be safeguarded even at war. The appearance of armed conflicts has now been changed and children are used to act behind the scene supplying weapons, operating electronic devices and etc. Consequently, the right to education coupled with the right to equal treatment requires the State to take necessary measures to ensure the protection of child soldiers concerning predominantly the contemporary issues. It is therefore perceived there is a need of an in depth research

with regard to education rights of child soldiers and to ensure the prevention of their infringement.

VII.RECOMMENDATIONS

It should be understood written law alone cannot protect the education rights of child soldiers. In practice, children are deprived of right to education because of their involvement in hostilities. Thus, the existing law should be implemented and its loopholes should be covered by a novel policy in the realm of IHL. Governments are principally responsible for the implementation of International Human rights and Humanitarian Law during the periods of armed conflict. During non-international armed conflicts, governments and armed opposition groups may each bear responsibility for their obedience to these norms (Weissbrodt, 1989). In this regard, state should take affirmative action to prevent the children from taking part in hostilities and ensure their right to education. Moreover, in the domestic context, there should be an agreement between the parties to a conflict that they will respect laws of war and ensure their proper implementation. Even if a child is engaged in armed conflict there should be an effective mechanism to rehabilitate him/her when surrendered. This rehabilitation process should identify the significance of education as a fundamental human right. As discussed above, in the post war situations in Sri Lanka UNICEF assisted the government of Sri Lanka with a legal framework to rehabilitate the child soldiers. This method introduced by UNICEF need to be continued since there are number of child soldiers in the country even if the end of the war has been marked. It is to be realised by Sri Lanka as well as by other countries the end of war does not remark the end of the lives of child soldiers. Hence, there is much to be said for the view that child soldiers have a fundamental right to education and much more to be done to make it a reality.

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