

Chapter-08

CRIME AGAINST CHILDREN AND ITS SAFEGUARDS IN INDIA

Dr. Manoj Kumar Dhirania
Suprem Court

Dr. Archana Vashishth
Associate Professor Apeejay Stya University, Gurugram

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ABSTRACT:

Since time immemorial, due to their inherent natural weakness, children have been the victims of criminal offences alongside women. Crimes committed against children are not restrict to any specific gender or age. Children are part of the weaker section of our society and the soft target of the offender. It is the need of time that children has special needs and they require distinct treatment from adults. Children are the rock foundation of every nation. They become the world's leaders, the producers of national riches, who look after the human race and protect the land from which it has its origins.

Children are the foundation stone upon which every nation's future is founded. Children increase their thinking skills to establish their own ideas on various matters and get the chance to best planning and goal-setting. Children want independent recognition on their own as well as freedom from their elders.

Despite various child safeguards in India, 40% of Indian children continue to live in terrible conditions, both within the statutory homes as well as the broader community. We must understand the need for protection of child rights in the social environment.

For improving the rights of children, the concept of social justice has to be kept in brain by the law makers. This objective is achieved by providing provision in the constitution of India about social justice for children in special laws according to Article 15(3) of the Constitution of India. Based on this, various laws have been enacted by the Government to guarantee child care and safety.

Article 21, Article 15(3) provides guarantee to protect the rights of children that only allow them to enjoy the benefits of guaranteed equality. Moreover, the Judiciary has been allowed to promote child rights jurisprudence in Articles 39 (e) & 39 (f), Article 42, Article 45, and Article 47 of the Indian Constitution.

Parliament has adopted from time to time various demonstrations regarding Juvenile Justice and various amendments have been made pursuant thereto such as in 1986, 2000, 2006, 2015, 2021 etc. As per former CJI V.R. Krishna Iyer a kid is the 'father' of an adult/man.

In 1974, India introduced a National Child Policy to achieve the fundamental rights of children. A child should not be robbed of their childhood either socially, intellectually or financially.

Keywords: *Safeguards, jurisprudence, terrible, amendments, guarantee.*

INTRODUCTION:

In India, it is supposed that child are a form of God. Even twice in a year, in Hindu dharma in the Navratri festival, the girl child is worship is done in the form of several Goddess. All the men and women are touch the feet of girl child and receive the blessings. Despite this on the several occasions this procedure has been followed in India.

As per National Crime Reports Bureau (NCRB), 2020 sexual crimes against children are increasing day by day. In the year 2020, total 47221 cases have been registered against children. Crimes of kidnapping and abduction against children reported 42.6% including child rape under the Protection of Children against Sexual Offences (POCSO) Act. Cases under POCSO Act have increased since the year 2014, however in the year 2017 it was decreased. Out of total reported cased under the POCSO Act, 99% were minor girls i.e from 4 months to 18 years. In more than 95% cases of child sexual abuse, the accused were known to child victims and near-about 54% cased they are the close family members, relatives or friends. No doubt the conviction rate for POCSO cases are high but it is a question of anxiety that the cases are increasing day by day and the pendency of cases in the courts is also increasing.

OBJECTIVE:

- To understand the mindset of offenders and values of society in their eyes.
- To explore the problems and challenges of child in society and crimes encountered againsg them.
- To explore and understand the view of administration with a victim when he/she faced a crime.
- To know and study the current view of Hon'ble Courts and Houses to protect the rights of children.
- To identify the several types of violence against the children .

METHODOLOGY:

The quantitative data from National Crime Record Bureau (NCRB), print and electronic media are used for the research. The nature of the research is descriptive and the secondary data collected from the reports of NCRB. Both secondary and primary sources were used in this analysis.

REVIEW OF LITERATURE:

- (1) **Juvenile Justice Act(JJA), 2000, 2006, 2015 and 2021:** These Acts provides special safeguards to the children.
- (2) **Ritwik Tyagi “The Juvenile Justice (Care and Protection of Children) Act, 2015 – Critical Analysis”:** This Article critically examines the Juvenile Justice Acts, 1986, 2000 and 2015, including the reduction of the age of juveniles to subject them to the justice system available for adult criminals. It also stresses on the rehabilitation and education of children and not on tougher punishment.
- (3) **Vishaka and Ors Vs. State of Rajasthan and Ors. (AIR 1997 SUPREME COURT 3011):** On 13th August 1997, the Hon'ble Supreme Court of India passed a landmark judgement about the gang rape of a woman. In 1992, five accused violently gang-raped social worker Bhanwari Devi in Rajasthan because she tried to avoid the marriage of a one-year-old girl in rural Rajasthan which is a social crime on the girl child. NGOs to file a petition through a lawyer, Naina Kapoor, at the Supreme Court under Vishakha's collaborative platform. In this case, the judgement the sexual harassment is declared as violative of the fundamental rights under Article 21, i.e. Right to the dignified life, Equality before the law and equal protection of the law provided under article 14, Article 15 that prohibits the discrimination on the grounds of caste, colour, sex, religion, place of birth.
- (4) **The Constitution of India:** Provides Equality before the law, right to life, equal opportunities and safeguards.
- (5) **The Bonded Labour System (Abolition) Act, 1976:** Under Article 23 of the Constitution of India, Prohibition is imposed on the practice of Traffic in Human Being and of Forced labour. It also provides that contravention of said prohibition is an offence.
- (6) **The Indian Penal Code, 1860:** There are several provisions in the Indian Penal Code for the protection of children in India.

ISSUES WITH CHILD ABUSE IN INDIA:

In 1979, the Indian government prepared a “National Plan of Action” to commemorate the “International Year of the Child” (IYC) for their better future. As per report of CRY (a child right NGO), in India a sexual offence is committed in every fifteen minutes against a girl child. This figure has been increased more than 500 & in the last 10 years. NCRB data shows that these crimes are close relative, family friends and

known to the victim. In our criminal judicial system due to lack of manpower, shortage of judges, public prosecutors and infrastructure the conviction rate of these crimes is very less because recording of evidence and investigations are hardly completed on time. However, the POCSO Act being enacted in the year 2012 but there is no reduction in the number of crimes against the children. This law did not act as a deterrent. The victims are often humiliated by the hospital staff and police personal. They were very far to receive from vital support services such as legal aid, counselling and health care.

In poverty, some people are forced to engage them in burglary, robbery, prostitution, and drug trafficking. Despite the national slogan, i.e. 'Beti Bachao Beti Padhao' by Hon'ble the Prime Minister of India Mr. Narendra Modi, State Administration's irresponsible conduct, problems and challenges are facing by girl child in India.

OFFENCES AGAINST CHILDREN:

- **Domestic Violence/Cruelty and child abuse:** In the Child Abuse Prevention and Treatment Act, the terms "Child Abuse" is defined. Physical assault, sexual exploitation, psychological negligence and ill-treatment are a few types of child abuse. To creating mental pressure by threatening with physical harm or assault/beating him/her is comes under Section 351 of Indian Penal Code. Not only parents but also the education institutions have the impression that physical punishment for child mistake is the only way to get disciplined him/her. Hence it is an accepted notion in our country. No doubt that in today's life physical punishment have seen a decline because laws are strict but there is no solution for domestic abuse of children. Domestic violence such as burning, hitting, punching, shaking, kicking and beating is common and often witnessed by children in almost every family.
- **Begging:** Child begging exists in the country on a large scale. If someone wants to give food to the beggar in place of money, he/she refuse to receive the food. When a person given to money for them for their betterment, the parents or leader of their racket grab that money.
- **Intoxicating a Child:** We can see on the roadside that children are selling alcohol, drugs, cigarettes etc. There is group behind them who are pressurised them to do this type of work.
- **Kidnapping and abduction:** A child being kidnapped so that the kidnapper can extort some money from his guardians, sold to human traffickers for different

purposes such as employing in the beggary, indulging in child prostitution, hire as house helpers coerce towards illicit relationships or illegal marriage. Except these child are kidnapped by divorced or separated parents for keeping such a child with him. In the society, sometimes children are kidnapped and sold to adoption agencies resulting in illegal adoption of such children and sometimes kidnapped for extorting ransom and after the amount is received they are murdered by kidnapers as well they are kidnapped for various reasons like family feud, personal vengeance etc.

- **Child Prostitution:** Despite illegal everywhere sex rackets pressurise the children to provide sexual services in exchange for money.
- **Child Pornography:** Coercing a child for indulging in sexually explicit act and recording them. However it is illegal in all the nations and the websites are strictly directed for removal any sexually explicit content involving a child from the websites.
- **Child molestation and rape:** Such crimes might be committed to a child by a family friend, family member, house help, school/tuition teacher etc. and child stays silent due to threats from the perpetrators. Sometimes their family advises them to maintain secrecy for the purpose of maintaining so-called family honour. Hence, the number of sexual cases against a child are increasing day by day and the majority of cases do not get reported.

Some Incidents:

1. On 10th January, 2018 in Kathua (Jammu & Kashmir) the daughter of a muslim shepherd, 8 years old Asifa Bano abducted, raped and murdered and her body found with signs of torture. A former government official was prime accused including four policeman and three others were accused alongwith one juvenile in this incident. All the accused (except juvenile) were charged under Section 302, 376, 201 and 120-B of the Ranbir Penal Code. The little girl was held prisoner for several days in a temple in Kathua drugged, raped repeatedly and finally strangled and hit twice on the head with a stone. After more than 100 hearings, on 3rd June, 2019 a Special court in Pathankot convicted six out of 7 accused of rape and murder and the 7th juvenile accused was acquitted. We have to understand the mindset of rape and gang rape. The incident of Kathua gang rape is even further from the Nirbhaya gang-rape incident in Delhi in December 2012 because neither the public nor the administration has not learned any lesson from that incident.

2. In 2021, a nine year old dalit girl was allegedly raped by a crematorium's priest in Old Nangal Village of southwest Delhi's and her body was forcefully cremated. The victim went to get water from a collar at the crematorium. Only the burnt legs of the victim were recovered from the crematorium ground. The statement of the complainant has been recorded under section 164 of the Cr. PC, SC/ST Act and POCSO Act, Section 302, 376 and 506 of IPC have been added in the FIR. Four people including the priest have been arrested and sent to judicial custody. Police said that only legs of the deceased were recovered and it is very difficult to ascertain whether she was raped or not.

CONSTITUTIONAL AND LEGAL SAFEGUARDS IN INDIA:

Article 15(3): "It enables the government to make special arrangements for children".

Article 21-A: "Children aged 6-14 must receive free and mandatory education from the Government".

Article 23: "Human trafficking and forced labour are prohibited."

Article 24: "Children below 14 years of age are prohibited from working in factories, mines, or other dangerous employment."

Article 39(e): "It instructs the Government to protect children of a vulnerable age from engaging in inappropriate activities for their age or strength."

Article 39(f): "Directs the State to provide opportunities and resources for children's healthy growth and protect children and youth from abuse and moral and material abandonment."

Article 45: "Children below 6 years of age are provided with early childhood care and education by the Government."

Article 47: It is the State's responsibility to boost nutrition and living standards, as well as public health.

- **The Bonded Labour System (Abolition) Act, 1976:** An Act to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

- **The Protection of Human Rights Act 1993:** The Act provides for the Constitution of a National Human Rights Commission, State Human Rights Commission, and Human Rights Courts for better protection of Human Rights.
- **The Indian Penal Code, 1860:** There are several provisions in the Indian Penal Code, 1860 for the protection of the children in India. Section 302 of IPC, 1860 provide for punishment to accused for killing of a child. Section 305 to abate of suicide of any minor or insane person. Section 312 to 318 described punishments of offences related to unborn children, exposing infants and concealment of births. Section 359 to 369 deals with the description of kidnapping. Section 373 deals with punishment of those who buy or hire a children under the age of 18 years. Section 375 punished a man who have committed the rape of a minor girl. Several other provisions are as follows : Section 372 - Selling of girls for prostitution, Section 373 - buying of girls for prostitution and rape Section 376-Rape.
- **Protection of Children Against Sexual Offences Act, 2012 (POCSO):** This was enacted to provide a vigorous legal framework for protecting children from offences like sexual harrasment and assault, pornography and protecting the juvenile's interest at every stage of judicial process. The new enactment provides for various crimes for which an accused can be punished.
- **INFORMATION AND TECHNOLOGY ACT, 2000:** Section 67B of this Act enshrines the provisions related to the description of child pornography and mentions the punishment for the offencer.
- **The Children Act, 1960:** In the first five-year plan, various programmes were implemented for addressing the requirements of neglected children. The Children Act of 1960 provides treatment, safety, well-being, schooling and resettlement of children who had been neglected or abused. This Act allows the formation of an Observation Home for the stay of minors during the processing of their cases, Children's Home for abused and offending kids.
- **The Juvenile Justice Act, 1986:** The Juvenile Justice Act, 1986 was enacted for the purpose of providing a uniform or standardized Children Act around the world. The "justice" approach has become possible only because of the "welfare" approach adopted in the JJA. In 1986, 3 sets of laws were enacted with the aim of protecting the child population across the world.
- **The Juvenile Justice (Care & Protection of Children) Act, 2000:** The passage of this Act promoted the "justice" and "rights" approaches to children in need of care and protection. This Act included several provisions and principles aimed at providing

extra attention and security to delinquents and abandoned children to help them reintegrate into society.

- **The Juvenile Justice (Care and Protection of Children) (Amendment) Act 2006:** In 2006, JJA 2000 was amended to specify that the juvenile accused must be below 18 years of age on the "date of commission of the crime" and not on the "date of arrest."
- **The Juvenile Justice (Care and Protection of Children) Act 2015:** Many significant and new concepts are included in the new Act for the protections of children, such as children bereaved, abandoned and given up; small, severe and odd children's crimes; clarity in JJB and CWC powers etc.
- **The Juvenile Justice (Care and Protection Of Children) (Amendment) Act 2021" :** It seeks to amend the JJA 2015 which allowed the juveniles between the age group of 16 to 18 years to be tried as adults. With this Amendment Act of 2021, the powers and responsibilities of the District Magistrates have been increased so that the trials can be completed speedily and the measures for protection at the district level can also be increased. In India, National Human Rights Commission (NHRC) being an independent institution, monitors and protects human rights. Our goal is to provide all children with equal opportunities for upliftment and growth during their teenage years and eliminate discrimination and ensure social justice for all.
- **Juvenile Justice (Care and Protection of Children) Act, 2018:** It is the fundamental law in India in dealing with children in need of care and protection. It caters to their needs through care, protection, development, treatment, social reintegration, through its child-friendly approach by addressing matters in the best interest of children. Section 80 of JJA provides protection from adopting a children without prescribed procedures. Section 81 from selling and procuring children for any purpose. Section 82 from corporal punishment. Section 83 from use of a child by militant facgtions or other adults. Section 84 from kidnapping and abducting the children. Section 85 from commission of offences on handicapped. Section 87 from abatement.
- **Criminal Law (Amendment) Bill, 2018:** This Bill amend relevant Sections of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and also the Protection of Children from Sexual Offences Act (POCSO Act) 2012, such as :

- i. Time-bound (within two months) investigation in cases of rape of girl children.
- ii. The cases are to be tried in a fast track court and must be disposed of within six months.
- iii. If the victim is under 12 years of age, the accused faces a minimum sentence of 20 years and maximum punishment is death. In the cases of gang rape of a child under 12, the minimum punishment is a life sentence while the maximum is the death penalty.
- iv. In cases of children aged between 12 and 16, the offence of rape is punishable with a minimum sentence of 20 years and maximum punishment in such cases is life imprisonment. If a girl aged between 12 and 16 is gang-raped, the convicts face a minimum punishment of life sentence.
- v. If the victim aged between 16 and 18, the offence of rape is punishable with a minimum punishment of 10-year jail term and the maximum is life imprisonment. Repeat offenders will be punished with life imprisonment or death.

However, the punishment for rape of boys has remained unchanged.

CONCLUSION:

The Indian took various incitive to safeguard the right of the children and to assist them in attain equal and rightful status within the Society. The Constitution of India is regarded as our country's basic rule. Citizens' rights and obligations are defined in our Constitution.

The Constitution establishes several basic safeguards, particularly for children's wellbeing. The root of all crimes against minors can thus be traced to their weeknesses. The children being totally unaware about what is the motive, mindset and intention of the offender. The legislations provides protections to children but such safeguards are only on paper without proper implementation.

REFERENCES:

- The Constitution of India
- Indian Penal Code, 1860.
- Juvenile Justice Act(JJA), 2000, 2006, 2015 and 2021
- Information Technology Act, 2000.

- Protection of Child from Sexual Offences Act, 2012.
- The Bonded Labour System (Abolition) Act, 1976
- Ph.D. Thesis, 2022, Ritu Dhirania “An analysis of juvenile justice system in India- A socio legal study with special reference to Delhi NCR
- Ritwik Tyagi “The Juvenile Justice (Care and Protection of Children) Act, 2015 - Critical Analysis”
- Vishaka and Ors Vs. State of Rajasthan and Ors. (AIR 1997 SUPREME COURT 3011)