

JUVENILE JUSTICE SYSTEM AND CHILD RELATED LEGISLATION IN INDIA

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Abstract: With an incessant increase in the number of violations of child rights today hardly a day passes by where a case of child rights abuse is not reported. 36,022 cases have been recorded under POCSO Act in the past one year only. This research study embarks upon analysing the scope and relevance of the extant laws and regulations governing child interests.

Keywords: Juvenile Justice, POCSO Act, United Nations Children's Fund, Legislative frameworks for protection of child rights, Constitutional rights, Child Welfare, National Policy for Children

1. Introduction

DESPITE of the general belief that children are a heritage from God, hardly a single day passes by where the newspaper headlines are not covering news of child abduction, child separation from parents, child abuse and other atrocious crimes relating to juveniles. This research paper evaluates the juvenile justice system and child relation legislation in India.

2. Research objectives

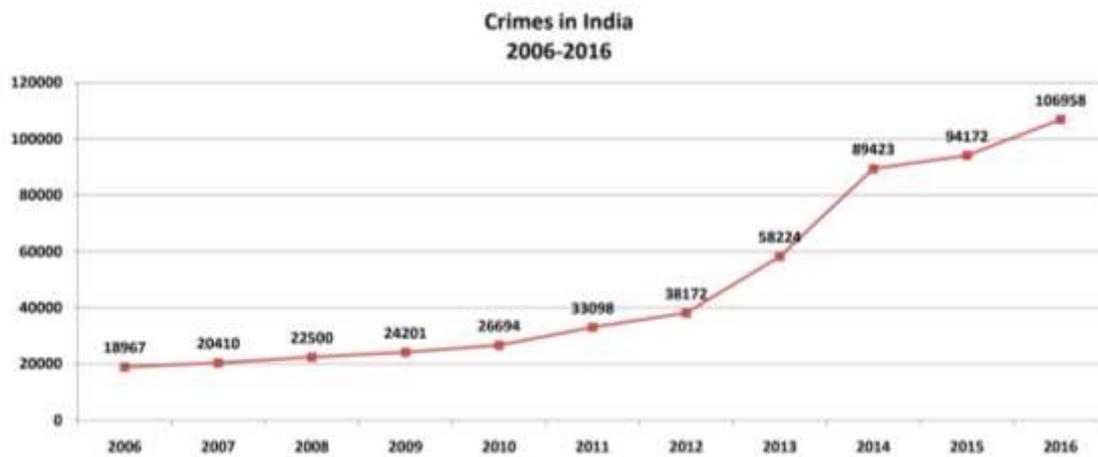
The present research study has the objective of identifying, evaluating and assessing the child related norms and laws applicable in India.

3. Research methodology

This research has been modelled upon applied research methodology coalesced with participatory observation and active research. The endeavour has been to meticulously analyse various legal provisions relating to child rights as provided in different regulations. Further a survey was conducted amongst different Non-Governmental Organisations (NGOs) accumulating real life data and thereafter analysing it with the legal situation and Court verdicts. The discussion on protection of child rights and juvenile justice can be fragmented into two parts - the first part is related to Legislative frameworks, National Policy for Children and Constitutional Rights. The second part is related to measuring the extent of success in the implementation of these legal instruments.

4. Research analysis

The number of juvenile population is the biggest in India amongst the world. 39% of the Indian population comprises of children (Census, 2011). Despite of the fact that our Constitution guarantees all fundamental rights to the children and the Directive Principles of State Governments for formulating beneficial policies for Children and many other laws and legal protection for children, 36,022 cases have been recorded under Protection of Children from Sexual Offences (POCSO) Act in the past one year only. National Crime Records Bureau Report further reports that "*a child is sexually abused every 20 minutes in India*". Over the past decade, crime against children has been augmented by more than 500% as depicted by the below representation:



Source: NCRB, CRY Media release: *Crime against Children 2016*

The word 'juvenile' is used for those persons who are legally unable to get justice by themselves. The juvenile crime takes place in the multiple forms ranging from theft, vandalism, alcohol offense tobacco offense to assault, murder and other heinous crimes.

Juvenile justice is must to protect children from any kind of exploitation, abuse or violence. Millions of children across the globe are suffering from violation of human rights. United Nations Children's Fund (UNICEF) is one of the international organisation which stands up in support of children in this violation. Many serious problems are associated with the children e.g. practice of child marriage. The UNICEF report provides that approximately 650 million girls and women alive today were married before turning the age of 18. It is pertinent to note that one in every three of the child marriages that take place globally are made in India. Census 2011, highlights that 33.8 million child marriages were reported for girls aged less than 18 and boys below 21 years. When it is analysed further, it is observed that high variances exists regarding child marriage in India across different regions, states and between urban and rural areas. Child development forms a crucial part of the Human Development Index (HDI) of a nation. Poor child development scenario signifies a larger deficiency in the competency and self-ability of a country in providing suitable growing and nurturing environment to its young citizens.

Juvenile justice system is an alternate judicial mechanism administering the cases relating to juveniles who are those young citizens who are not matured enough to undergo through the austere criminal chastisement. Therefore the criminal acts committed by the juveniles are also termed as juvenile delinquencies. Section 125 of the Maintenance of child and protection of girl child under the Criminal Procedure Code, 1973 lays down provision for maintenance allowance to be provided to the child as a matter of right from the guardian in cases of neglect or refusal of his maintenance. In practice, Section 125 is legislated as a tool for social justice. It provides an effective remedy to seek for maintenance for neglected children. This provision has been made so empowered that the cases of neglect or refusal by conduct or by words by the Guardian have also been covered in its coverage. The provision is considered by irrespective of the religion, caste or any other discrimination. Section 82 of the Indian Penal Code, 1860 provides an umbrella protection to all the offenses committed by a child under the age of 7 years, meaning thereby that any illegal act committed by a child under the age of 7 years will not be considered to be an offense under the said code. Section 317 further fixes that it is the responsibility of the parents to take care of the child. It reads as whoever being the father or mother of a child under the age of 12 years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extent to 7 years, or with fine, or with both. Section 366A provides special privileges to girl child. Similarly, dealing in minors for prostitution is a punishable offence as per Section 372.

The Indian Juvenile law has never been considered to be fairly drafted or wilfully implemented. The Juvenile Justice (Care and Protection of Children) Act, 2015 came as a re-enactment of the erstwhile Juvenile Justice (Care and Protection of Children) Act, 2000 after the Nirbhaya case. It had been reintroduced to make comprehensive provisions for two categories of children. Firstly children found to be in conflict with law and secondly children in need of protection and care, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter country Adoption (1993), and other related international instruments.. The said enforcement seeks to consolidate and amend the law relating to children by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

The Right to Education (“RTE”) has been accorded the same legal status as that of the right of life under the Indian Constitution. Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his neighbourhood. It is mandatory for the private schools to enrol 25% of total seats to the children from weaker sections by simple random selection. Such children shall be treated at par (i.e. with equality) with all the other children in the school. No seats in this category can be left vacant. No child can be denied admission for want of documents and no child shall be asked to take an admission test.

National Policy for Children

The Government of India has adopted a new National Policy for Children, 2013 on April 26, 2013. As per the Policy, every person below 18 years of age is considered as a child. The policy extends to cover all children within the territory and jurisdiction of India. It covers different areas for focused attention on children including survival, nutrition, health, education, participation and protection. The new National Policy for Children paved the way for adoption of National Plan of Action for Children, 2016 (NPAC 2016). It combines the Sustainable Development Goals (SDGs) and further provides a roadmap towards achieving them through co-ordination and convergence with different stakeholders. Key programmes and schemes included in NPAC 2016 include Janani Suraksha Yojana, Beti Bachao Beti Padhao, Indira Gandhi Matritva Sahayog Yojana, Mid-Day Meal, National Health Mission, National Nutrition Mission etc.

Constitutional Rights

The Constitution of India confer powers and impose duties, under clause (3) of Article 15, clauses (e) and (f) of Article 39, Article 45 and Article 47, on the State Governments to ensure that all the needs of children are met and that their basic human rights are fully protected. Article 14 of the Constitution of India explicitly provides the framework for equality before law and equal protection of law to all persons within the territory of India. Therefore everyone including children has been provided with the fundamental rights of equality of status, opportunity and protection. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, class, and place of birth or any of them. While at the same time allows for special safeguards for the protection of children. Article 24 is further protection in this regard which prohibits the employment of children in factories etc.

Part IV of the Indian Constitution provide fundamental provisions which shall be the duty of the State Government’s to apply in making laws. Article 39(a), (e) and (f) contain explicit provisions to be followed by the State for the welfare of the children. Article 41 further leads to the responsibility of the State to make effective provisions for securing the right to education and to public assistance in cases of disablement and sickness within the limits of its economic capacity and development. Article 45 in explicit terms directs the State to endeavour to provide free and compulsory education for all children until they complete the age of 6 years. This direction reflects the interest of the framers of the constitution as regards the education of the children as education is the foundation for a healthy and proper development of a child. The State responsibility to provide for just and humane conditions of work and maternity relief, also ultimately aims at the well-being of children.

Development of youth of a country is imperative for the growth of the nation. Being in the initial phase of their life they are not able to safeguard their rights completely on their own. Further juveniles intend to commit crime because of poverty, wide scale unemployment, illiteracy and the desire to earn quick money, domestic violence, lack of moral guidance. Therefore they require immense societal support to stand up and live a decent life. A meticulous examination of numerous legislations provides the insight that adequate safeguards have been made in the extant legislature for protecting and promoting the interests of the juveniles. For clearing up the deterrence in mature development of the juveniles even a separate judicial system for the juveniles has been established in the Indian judicial system. Even more appalling fact is that numerous cases of child rights violations are not even registered within the judicial system. The data obtained from different NGO’s and organisations highlight the fact the number of child rights cases which are registered with the authorities are not even 80% of the number of actual cases. The reason of that can be unwillingness of authorities to add more cases to the already existing pile of cases. Secondly the lack of awareness about the legal remedies available is also an important factor for the no - show by the victim. Thirdly the societal mind about the negative image of the victim further deters the victims in actively reporting their cases and pursuing it further in the court of law. Fourthly the gloomy fact that it may take years to get a court verdict slows the morale of a petitioner to file his complaint. Innumerable cases can be quoted to highlight the deteriorating quality of juveniles in India. The instances of crimes under the POCSO Act, kidnapping, assaults, procurement of girls have been hitting the news headlines almost daily. The memory of Nirbhaya case of 2012 is still intact in the minds of the general public. Further with the existence of multiple regulations the accused is able to make use of legal loopholes and is therefore guarded with the judicial shield. It is imperative today to do away with the multiplicity of laws. Thereafter the enactment of a “code” combining the salient provisions of other laws must be completed at the earliest phase. Also strict timelines for pronouncement of verdict must be laid down so as to provide for swift clearance of case logs. Another important step can be the establishment of a quasi-judicial body to be formed with the sole objective of governing the child related framework within the Indian territorial jurisdiction. The said authority must be empowered with taking cognizance of cases of child rights violation reported to it. Further the independence of this body shall be the heart and soul for clear functioning of the said body and providing speedy justice to the victims.

5. Conclusion

According to National Crime Record Bureau report “*Crime in India: Compendium*”, a total of 89,423 cases of crimes against children were reported in the country during 2014. The crime rate i.e. incidence of crimes committed against children per one lakh population of children was recorded as 20.1 during 2014 in comparison to 13.23 in 2013. These figures indicate a substantial increase in number of *registered cases* of crimes against children over the years, therefore justifying the dire need of public awareness and judicial activism considering the massive non compliances with the extant regulations. Rapid increase in cases of juvenile delinquency has led to low social status and lack of economic opportunities. The number of juvenile homes presently in India is inadequate comparing the rising number of juvenile related crimes. Further juvenile homes lack the required infrastructure which is essential for the development of children.

Numerous child related laws have been discussed herein above which provides shelter to juvenile and further suggests improvement measures that can be taken as improvement measures. However even after enactment of strict legal provisions these are not acting as a deterrent for juveniles facing humiliating conditions within the juvenile homes. Therefore there arises a need for zero tolerance attitude with stringent enforcement of the existing laws for the protection of the child interests. Mass awareness, sensitiveness towards the child and political activism is today needed to defend the child rights in India.

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