



# OFFENCES AGAINST CHILDREN AND JUVENILE OFFENCES

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## Abstract

For the best interest of the juvenile or the child; for his or her proper care and protection , a number of legislative provisions have been developed from time to time . The latest juvenile Act i.e. Act of 2006 does provide country wide uniform legislation incorporating provisions for rehabilitation of children in conflict with law and also children in need care and protection. However, this Act in conjunction with Probation of Offenders Act and certain provisions of Code of criminal Procedure, together constitute the legal frame work for juvenile justice, is not being properly implemented due to a multiplicity of factors and therefore has not yet achieved an eye-catching goal. So, there is a burning need for making suitable amendments of the laws governing the administration of justice, providing regular orientation training to those who are associated with implementation of various statutory provisions of these enactments establishing the required co-ordination among them. To achieve this goal, a determined political will as well as people's participation is very much required.

*The hallmark of culture and advance of civilization consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.*

*V.R. Krishna Iyer J'*

## Introduction

Children are heaven's Lieutenants. They have the right to life and well being; to health care, nutrition and shelter; to protection from conflict, neglect, exploitation, abuse and injustice. They are our future and therefore let them not be denied of their rights to grow. Because the future and stability of a society depends upon the quality of its children and the quality of its children in turn depends upon the manner on which welfare is planned. A child as an important social unit has therefore to be taken care of as a whole instead of some isolated phase in his development and no one should forget the saying, "let children be children". Children, being the supremely important national assets, require special attention and protection against all sorts of neglect and exploitation and it is the social responsibility of the state to work in this direction in a strong and positive manner. Accordingly Constitution of India, different legislations, National Policies etc. in national level and different conventions, Recommendations, Declarations etc., in international level have tried their best to protect the children in every respect. But with the progress and development of the society, even in twenty first century, the rights of the children are being squeezed and the plight of the children remains the same. Day by day, rather offences against children are increasing child rape, kidnapping and abduction, child prostitution, exposure and abandonment, foeticide and infanticide, child labour, child trafficking, child abuse etc. are now very common in the society, which shows how much we are concerned about the welfare and protection of our children.

## Children In Indian Legal Setting

In a civilised society, the welfare of the child is considered to be paramount and the State can never overlook the most valuable asset of the nation—the child. Every necessary step is to be taken by the State for the proper growth and development of children. Accordingly Constitution of India and other legislation's in accordance with the international norms and regulations provides some specific provisions for the protection, welfare and overall development of the children so that they can avail their minimum basic human rights and be protected from exploitation and abuse.

### *Constitutional Provisions*

The Constitution of India recognises the vulnerable position of children and their right to protection. Following the doctrine of protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty, the right against exploitation and provision for education, health etc. enshrined in Articles 14, 15, 15 (3), 19 (1) (a), 21, 21-A, 23, 24, 39 (e), 39 (f) 41, 45, 46, 47 and reiterate India's commitment to the protection, safety, security and well being of all its people, including children.

Article 14 says that, the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15 provides that, the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them, whereas Article 15 (3) categorically mentions that, nothing in this article shall prevent the State from making any special provision for women and children.

According to Article 19 (1) (a), all citizens shall have the right to freedom of speech and expression.

The most important Article, i.e., Article 21 says regarding protection of life and personal liberty, in which it is said that, no person shall be deprived of his wife or personal liberty except according to the procedure established by law. At the same time, regarding education, Article 21-A provides free and compulsory education for all children of the age of his to fourteen years.

Prohibition of traffic in human beings and forced labour has been provided under Articles 23 which says that, traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

### *Legislations*

Besides the constitutional mandates, several legislations are also there for the protection of child rights and over all development and welfare of children. The most important legislations are :

- i. Indian Penal Code, 1860;
- ii. The Guardian and Wards Act, 1890;
- iii. The Factories Act, 1954;
- iv. The Hindu Adoptions and maintenance Act, 1956;
- v. The Immoral Traffic (Prevention) Act, 1956;
- vi. The Probation of Offenders Act, 1958;
- vii. The Bombay Prevention of Begging Act, 1959;
- viii. The Orphanages and other charitable Homes (Supervision and Control) Act, 1960;
- x. The Bonded Labor System (Abolition) Act, 1976;
- xi. The Child Labor (Prohibition and Regulation) Act, 1968;
- xii. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Act, 1987;
- xiv. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 ;
- xvi. The Juvenile Justice (Care and Protection) Act, 2000;
- xvii. The Commission for Protection of Child Rights Act, 2005; and
- xviii. The Prohibition of Child Marriage Act, 2006 etc.

### *National Policies*

For the welfare of children, the Government of India from time to time has adopted various policies and plan documents which may be enlisted below :

- i. National Policy for Children, 1974
- ii. National Policy on Education, 1986
- iii. National Policy on Child Labour, 1987
- iv. National Nutrition Policy, 1993
- v. National Health Policy, 2002
- vi. National Charter for Children, 2004; and
- vii. Nation Plan of Action for Children, 2005 etc.

### *Schemes And Programmes*

Some of the existing child protection schemes and programmes include :

- i. A Programme for Juvenile Justice for children in need of care and protection and children in conflict with law. The Government of India provides financial assistance to the State Governments/ Union Territories Administrations for establishment and maintenance of various homes, salary of staff, food, clothing etc. for children in need of care and protection and juveniles in conflict with law. Financial assistance is based on proposals submitted by the States on a 50-50 cost sharing basis.
- ii. An Integrated Programme for Street Children without homes and family ties. Under the scheme, NGOs are supported to run twenty four hours drop-in shelters and provide food, clothing, shelter, non-formal education, recreation, counselling, guidance and referral services for children. The other components of the scheme include enrolment in schools, vocational training, mobilizing preventive health services and reducing the incidence of drug and substance abuse etc.
- iii. (it) Childline Service for children in distress, especially children in need Of care and protection so as to provide them medical services, shelter, rescue from abuse, counseling, repatriation and rehabilitation. Under this initiative, a telephone help line number 1098, runs in seventy four urban and semi-urban centers in the country.
- iv. Shishu Greha Scheme for care and protection of orphans/abandoned/ destitute infants or children up to six years and promote in-country adoption for rehabilitating them.
- v. Scheme for working children in need of care and protection for children working as domestic workers, at road-side dhabas, mechanic shops etc. The scheme provides for bridge education and vocational training, medicine, food, recreation and sports equipment's.
- vi. Rajiv Gandhi National Creche scheme for the children of working Mothers in the age group of zero to six years. The scheme provides for comprehensive day-care services including facilities for food, shelter, medical, recreation, etc. to children below six years of age.
- vii. Pilot Project to combat the Trafficking of Women and Children for commercial Sexual Exploitation in source and Destination Areas for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to home town and legal services.
- viii. National Child Labour Project (NCLP) for the rehabilitation of child labour. Under the scheme, Project Societies at the district level are fully funded for opening up of special schools/ Rehabilitation Centers for the rehabilitation of child labourers. These Special Schools / Rehabilitation Centers provide non-formal education, vocational training, supplementary nutrition and stipend to children withdrawn from employment.
- ix. Indo-US Child Labour Project (Indus) : The ministry of Labour , Government of India and the US Department of Labour have initiated a project aimed at eliminating child labour in ten hazardous sections across twenty one districts in five states namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and Delhi."<sup>1</sup>

<sup>1</sup> Ministry of Women and Child Development: "Schemes and Programmes on Child Protection"; Instruments and Standards for Protection of child Rights, 2007

### ***International Concern***

At the International level also a great concern has been raised for the welfare of the child Starting from the Universal Declaration of Human Rights, 1948 till the last convention on the Rights of the Child, 1989 have specific provisions for the welfare of children. The other important instruments in this regard and Declaration of the Rights of the Child, 1959 ; International covenant on Economic, Social and Cultural Rights, 1966 ; International Covenant on Civil and Political Rights, 1966 etc.

Besides all these attempts, in the year 1990, the United Nations Children's Fund (UNICEF) Convened a World Summit.<sup>2</sup> The Summit came out with a declaration on the 'Survival, Protection and Development of children' and a plan of action for implementing the Declaration.

The word Summit reflected the world's hope for children and as a part of the plan of action for implementing the world Declaration, major and sectoral goals were also formulated.

Later, in 1994, an Inter-Disciplinary International Conference was held at New Delhi on the principal theme "Shaping the Future by Law: Children, Environment and Human Health"<sup>3</sup>, in which some important recommendations were made to focus on the situation of Children, their rights, health, education, development etc.

On the other hand, to carry out the message of the convention on the rights of the child, UNICEF and several other leading organisations who are working with children came together to announce their commitment to building a Global movement for children. This movement has been mobilising support all over the world for a ten-point agenda that aims to 'charge the world with children'<sup>4</sup>

Similarly, South Asian Association for Regional Co-operation (SAARC) consisting of seven South-Asian Countries are coming together at regular intervals on behalf of the children to review 'what is being done and what needs to be done to let children develop to their full potential'<sup>5</sup> The 'SAARC convention on Prevention and Combating Trafficking in women and Children for Prosecution' is one of its example.

Likewise, International Labour Organisation (ILO) has also been playing an important and remarkable role by declaring eighteen conventions and twenty six recommendations with an aim to protect the child labourers.

But, despite the dozens of laws, Conventions, Declarations, Recommendations, Policies etc. the Children are Still deprived, disadvantaged, neglected, abandoned and exploited in the society. It is rally a matter of regret that India stands in top position for having highest number of child labourers and street children in the world. In every moment children are being victimized by various offences like rape, kidnapping and abduction, prostitution, foeticide and infanticide, trafficking etc. With the development of the society , offences against children are also increasing gradually which is a direct challenge to a right of a child .

### **Offences Against Children**

from the foregoing discussion, it is thus quite evident that a lot has been done for the protection and welfare of the children, but till now the situation has not been changed remarkably. Rather, day by day, a child who is born, is thrust into an unfamiliar world and is left at the mercy of adults. Giving birth to a child without having proper means and his neglect amounts to implied offences and also to some express crimes. The deprived children, both socially and economically, are victims of various kinds of violence which even at times make their survival threatened. A statistics in this regard is given below.

<sup>2</sup> The summit was held on September 30, 1990 which was the first major global action for the implementation of the convention on the rights of the child.

<sup>3</sup> The conference was held at 'Vigyan Bhawan', New Delhi from 21st to 25th March, 1994.

<sup>4</sup> UNICEF: The State of World's Children; 2002, p. 11.

<sup>5</sup> Mainstream; Vol. XXV, No. 7, January 25, 1997, p. 47.

**(A) WORKING GROUP REPORT ON INDIA'S CHILDREN<sup>6</sup>****(i) Child Survival and Child Health**

In India, 2.5 million children die in every year, accounting for one in five deaths in the world, which girls being fifty percent more likely to die. One out of sixteen children die before they attain one year of age, and one out of eleven die before they attain five years of age. India accounts for thirty five percent of the developing world's low birth weight babies and forty percent of child malnutrition in developing countries, one of the highest levels in the world. Although India neo-natal mortality rate declined in the 1990s, but it remained static between 1995 and 2000. The 2001 Census data and other studies illustrate the terrible impact of sex selection in India over the last few decades. The child sex ratio (0-6 years) declined from 945 girls to 1000 boys in 1991 to 927 in the 2001 census. Around eighty percent of the total five hundred seventy seven districts in the country registered a decline in the child sex ratio between 1991 and 2001. About thirty five percent of the districts registered child sex-ratios below the national average of 927 females per 1000 males. In the 1991 Census, there was only one district with a sex ratio below 850, but in 2001 census, there were forty nine such districts.

**(ii) Child Development**

The population of children aged zero to six years is 16.4 crores as per the 2001 census. According to a UNESCO report, however, of the total child population, 2.07 crores (six percent) are infants below one year; 4.17 crores (twelve percent) are toddlers in the age group one to two years; 7.73 crores (22.2 percent) are pre-schoolers in the age group three to five years. The report highlights that only twenty nine percent of pre-primary age children are enrolled in educational institutions in India. Services under Integrated Child Development Scheme (ICDS) covered only 3.41 crore children in the age group zero to six years as in March 2004, which is around twenty two percent of the total children in that age group. Supplementary nutrition too was being provided to 3.4 crore children, as against sixteen crore children. Of these, fifty three percent were reported to be under-nourished.

**(iii) Child Protection**

While on the one hand girls are being killed even before they are born, on the other hand children who are born and survive suffer from a number of violations. The world's highest number of working children is in India. To add to this, India has the world's largest number of sexually abused children, with a child below sixteen years raped every 155th minute, a child below ten every 13th hour and one in every ten children sexually abused at any point of time."

**(B) THE NCRB STATISTICS<sup>7</sup>**

The National Crime Records Bureau (NCRB) reported 33,098 cases of various crimes against children in 2011.<sup>8</sup> Most subtle forms of violence against children such as child marriage, economic exploitation, practices like the 'Devadasi' tradition of dedicating young girls to Gods and Goddesses, genital mutilation in some parts of the country are often rationalised on the grounds of culture and tradition. Physical and psychological punishments also take place in the name of disciplining the children and are culturally accepted.

The NCRB data provides that, between 2010 and 2011 there was a steep rise of twenty four percent in the total number of crimes against children. Among I.P.C. crimes, there were eight hundred sixty two number of cases under procurement of minor girls in 2011, registering an increase of twenty seven percent over 2010. Similarly, cases of kidnapping and abduction also increased by 34.2 percent during the year 2011, i.e. from 10,670 number of cases in 2010 to 15,284 in 2011. Uttar Pradesh, Madhya Pradesh, Delhi, Maharashtra, Bihar and Andhra Pradesh have accounted for 16.6 percent, 13.2 percent, 12.8 percent, 6.7 percent and 6.7 percent of total crimes respectively against children at the national level.

So far as the murder of children (including infanticides) is concerned, a total of one thousand five hundred fourteen cases were reported in the country in the year 2011. Uttar Pradesh has reported the highest number of such cases accounts for 22.9 percent of the total cases reported in India, whereas Arunachal Pradesh, Mizoram, Daman and Diu, Lakshadweep and Puducherry did

<sup>6</sup> Ministry of Women and Child Development: Working Group Report on Women and children for the Eleventh Five year Plan (2007-2012); 2007.

<sup>7</sup> National Crimes Record Bureau: Crimes in India; 2011, pp. 89-98.

<sup>8</sup> National crimes Record Bureau : Crimes in India; 2001, p. 91

not report any case of child murder during the year 2011. But only infanticide cases reported during 2011 are negligible i.e. sixty three cases at national level.

National Crime Records Bureau further provides that, a total of 7,112 cases of child rape were reported in India in the year 2011, which is an increase of 29.7 percent as compared to 2010. Madhya Pradesh has reported the highest number of such cases followed by Uttar Pradesh and Maharashtra. These three states altogether accounted for 44.5 percent of the total child rape cases reported in the country.

Likewise, the offence of kidnapping and abduction of children increased remarkably during the year 2011. A total of 15,282 cases of kidnapping and abducting of children were reported in 2011 as compared to 10,670 cases in the previous year accounting for a significant increase of 43.22 percent. Uttar Pradesh stands in top position for such offence.

Regarding foeticide, the statistics says that in 2011, there was an increase of 18.9 percent in these cases as compared to the cases reported in the year 2010. In this regard, Madhya Pradesh ranks the top position.

Similarly, according to NCRB data, only sixty one number of cases of abetment to suicide by children were reported during 2011, whereas a total of seven hundred cases were reported in that year regarding exposure and abandonment. Maharashtra has reported the highest number of such cases followed by Gujarat.

So far as procurement of minor girls in concerned, West Bengal has reported two hundred ninety-eight number of cases indicating a share of 34.6 percent at national level followed by Bihar, Assam and Andhra Pradesh. An increasing trend was observed in these cases during the last three years and in 2011 a total of eight hundred sixty two cases were reported in India, which is twenty seven percent more than the year 2010.

When the question of buying and selling of minor girls for prostitution arises, the statistics provides that Maharashtra has accounted for seventy four percent of cases of buying of girls for prostitution and west Bengal has accounted for seventy seven percent of the total cases of selling of girls for prostitution, as reported in the country.

The conviction rate at the national level for these crimes stood at 34.6 percent. The conviction rate for 'infanticide' (other than murder) was highest at 46.9 percent followed by cases under murder.

According to the NCRB data, 71.5 percent persons i.e. 31,0022 out of 43, 383 persons arrested for the crimes against children were charge-sheeted by the police and correspondingly, only 6,643 persons were convicted representing 33.6 percent conviction rate of persons arrested, which is marginally lower than the conviction rate (case-wise) for crimes committed against children, which is 34.6 percent, as stated before.

Thus, there is no separate classification of offences as offences against children. Generally, the offences committed against these vulnerable groups or the crimes in which children were victims are categorised as crimes against children.

## **CONCLUSION**

Offences against children need a humanitarian legislative approach. because children are our assets. We live for them. Parents regain peace and happiness in the company of the children. The children signify eternal optimism in the human being and always provide the potential for human development. As was opined by the Supreme Court in *Bandhua Mukti Morcha v. Union of India*,<sup>9</sup> "the Child of today can not develop to be a responsible and productive member of tomorrow's society unless an environment, which is conducive to his social and physical health, is assured to him. Every nation, developed or developing, links its future with the status of the child. Childhood holds the potential and also sets the limit to the future development of the society. Children are the greatest gift to humanity. Mankind has the best hold of itself. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole. If children are deprived of their childhood socially, economically, physically and mentally, the nation gets deprived of the potential human resources for social progress, economic empowerment and peace and order, the social stability and good citizenry. The founding fathers of the Constitution, therefore, have emphasized the importance of the role of the child and the need of its best development."

<sup>9</sup> (1997) 10 SCC 549.

In the light of this remark of the Apex Court, it may be said that offences against children should always be considered as a serious matter and every possible effort should be given to protect them, as a result, they could avail their minimum basic human rights.

