

Crimes Against Children: An Analytical Study

Dr. Naaz Akhtar Siddique

Ph.D in Law
Aligarh Muslim University,
Aligarh-UP

Dr. Asifa Parveen

Assistant Professor
Sanjivani College of Law,
Bahraich, Uttar Pradesh

ABSTRACT:-Children signify eternal optimism in the human being and provide potential for the development of any nation. Every nation whether developed or developing links its future with the status of the child. A child of today cannot 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. Neglecting children means loss to the society as a whole. If the 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, peace and order, social stability and good citizenry.

India has the largest number of children in the world. India's heritage of a stable family life and traditional joint family system has helped children grow an atmosphere of cooperation, warmth and affection into a secure future. However, with the changing socio-economic systems, weakening of the institution of joint family resulting in the nuclearization of the families the children are deprived of atmosphere of social security and warmth. Consequently they are propelled into an atmosphere where the parental care to the child is being shared with the institutions like crèches and schools. In the rural set up too, there has been a sharp trend towards the family nuclearization thus undermining the emotional, psychological and the social support system, which were instrumental in the child's upbringing. Besides, in the poorer families the children start to share the burden of running the households at a younger age. These children are deprived of both parental and institutional care. Even where institutional care is available to the children; it is a very poor substitute to the parental care. The concept of rights of the child though running in the socio-cultural ethos did not get explicit recognition less the wider acceptance of the society. We as a society do agree that children need to be protected and at the most agree to a passive role for the children. The belief that children do have their rights as adults, that they should participate in the decisions making regarding their lives, that they should be involved in these processes is yet to be internalized as a part of the value system. Though India is being projected as one of the leading developing nations, the progress on the rights of the child besides all these claims and achievements is slow and sloppy.

Every year 21 million children are born in India of whom 8 million die due to various infections and diseases. Nearly 13 million children are being added every year to the child population. The task of ensuring right to every child is enormous, since the number of children in the country is huge and it is a multicultural often diametrically opposed social ethos. While in the upper echelons of the society, the extra protectionism often leads to adults completely controlling the lives of the children and making decisions on part of the children and in the process, depriving children of the opportunities to develop into a complete, independent, socially aware being. On the other hand, children in the poorer families end up sharing the burden of families' race struggle the social ladder, to earn livelihood while they are oblivious of the gross violations of the rights of the child.

KEYWORDS: - Crime against Children, Child Labour, Child Trafficking, Juvenile Exploitation Child Prostitution.

Date of Submission: 10-08-2021

Date of Acceptance: 25-08-2021

I. INTRODUCTION

According to Convention on the Rights of Child 1989. "A child as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The committee on the rights of the child, monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18."

"Children are greatly loved in India. But this does not ensure for them the care and concern which is their due. The child is vital to the development of human resources and to safeguard the country's future. Therefore, childcare must be the cornerstone of all our constructive activities. The children are the best resources and the future treasures of the nation.

Today crime against Juveniles is a harsh reality and stirs the conscience of every thinking mind. It is the peak of human greed and exploitation. It symbolizes the human degradation and viciousness. The innocent children with their nimble fingers and tender bones are subjected to a number of crimes against them.

A number of scientific, sociological, psychological, anthropological and medical studies of the crimes against Juveniles have been made during the last few decades in all over the world including India. In India, in fact it is only after the attainment of independence that the interest was developed in the study of said problem where children are frequently stolen, abused, beaten, labored, burned, boiled & starved. They are the victims of various multifaceted crimes, i.e. rape, incest sexual molestations, forced labour, prostitution, physical & psychological abuses etc. probably due to their abject poverty, illiteracy, ignorance, large population, neglect in the family, social exploitation allurements and other related modes.

The problem has however received little attention from the researchers, the administrators and the social reformers. In India, there have been certain enactments made from time to time for the protection of children. Some of them are as follows:

- **Child Marriage Restraint Act, 1929.**
- **Children (Pledging of Laboratory) Act, 1933.**
- **The Probation of Offenders Act, 1958.**
- **Children Act, 1960.**
- **Child Labour (Prohibition & Regulation) Act, 1986.**
- **Juvenile Justice Act, 1986**
- **The Juvenile Justice (Care & Protection of Children) Act, 2000.**

The growth of the child into a mature & happy person with fully developed personality largely depends upon the support and attention he receives from the family, society, nation and the Laws. If there is any deficiency, his very development into a self sustaining human being is dwarfed. The children because of their physical and mental immaturity need special safeguards; therefore it becomes the imperative duty of State to protect the children's right by legislative and other means.

The nature of the crimes against juveniles often includes familiar child-beating, child-labor, physical and verbal abuses, sexual-abuse, encouraging or forcing them into bootlegging, prostitution, smuggling, begging, the sale of babies etc.

Child is the Future of Nation:-

The future custodians of all the present philosophies, including sovereignty, rule of law, justice, liberty, fraternity and international peace and security, are the children. They are potential embodiment of our ideals, aspirations, ambitions and future expectations.¹ They are the only messengers of our ideologies, philosophies, knowledge and cultural heritage.² They are, indeed, future shoulders in the form of great scientists, rulers, administrators, philosophers, legislators, teachers, judges, engineers, technologists, industrialist, planners, workers and politicians on whom the nation rests. It is a matter of pleasure that the growing emphasis on human development has focused the world's attention on the child as the significant future human resource and primary education as the fundamental part of education which in turn is the component of developmental process.³ Hence, both the child and primary education have been given prominence in several international documents.

Children are an important asset not only for their country but for the whole of mankind. They are not merely future adults. They are tiny apostles of peace and above all very much human being though weak and immature. They have enormous potential to grow and develop into adults of future obviously; they are not a commodity and hence cannot be subjected to family monopoly. Welfare and development of a society largely depends upon them.⁴

We must also realize that the efforts for advancement in the human conditions must start as early as possible and begin with the child and the mother, well before the child is born. Protecting the health and education of today's children is the first and foremost right of these children, but it is also the most basic and wisest of all investments and, thus for social and economic development of society.⁵

Since ages, children have been victimized by one abuse or the other. It is not wrong to say that they are neglected a lot. For children there has never been a golden age. Throughout the history of our society, children have been bought sold, enslaved, exploited and killed. They have been abandoned, severely beaten and physically abused.

In fact, the more we go in history we find that the lot of children had been houses, and crueler. Poverty and man situation have especially led to killings of children.

Ironically, the children have hardly ever enjoyed complete protection from the adults in society. There has been a widespread evidence of child ill-treatment seen everywhere. If we go deep into the pages of history, we would find a catalogue of abuses from which children have suffered in the past. Truly speaking, the victimization starts from the birth of a child itself. For instance, the practice of infanticide

or the willful killings of new born babies was widely accepted among ancient and prehistoric people as a legitimate means of dealing with unwanted children. The same has taken the shape of foeticide with the advent latest scientific and technological instruments.⁶

Abandonment was another ill treatment, noted out to children. Poor parents used to leave their newly born babies at deserted place, in order to get rid of them. It has been the practice in Europe, Africa and in India. The unmarried mothers also threw their illegitimate infants in dustbins.

Sexual exploitation is another abuse, which children have faced over the centuries. Out of last adults would modest them to their appeasement. Poverty and illiteracy has played great role in facing children to be exploited in order to earn their meals, a day. Children have been used as slaves and bonded labourers in all societies. In India, the children, coming from the lower strata or society served the mighty and wealthy. They served and died.

Although times have changed and the miseries of children have been reduced with the help of passage and implementation of certain laws yet their lot as a whole has not improved much. Even today, the children are forced to work against their will, as labourers, only meet to bounded over, if not slaves. Fortunately, the infanticide is not in practice, scale-though stray cases cannot be ruled out-but, there are instances, where unmarried mothers still abandon their unwanted babies, in fields, large dustbins are pits and tanks etc. Children- both girls and boys are exploited sexually, even now. The newspapers are full of news about rapes of minor girls and the inhuman attitude of adults towards young boys. This is the true picture of the harsh relations.

However, there are signs of hope. Now, the society is far becoming more aware about the state and status of the children. The governments have framed lower to stop in victimization of these. There are a number of social workers activities all over the world, who are committed to the welfare to children.

In India, too state of affairs, regarding the lot of the children has begun changed for better. Apart from the Government, a number of a non-governmental organizations (NGO's) are engaged in their pursuit of child welfare through various social, health and educational activities.⁷

India is a home land of more than one billion people, of whom one-third are children under 18 years of age. The world's tenth largest economy unfortunately ranks 127 on the Human Development Index (HDI). If all child rights indicators were to become a critical measure for HDI, India would fare even worse, especially because of its poor performance on child protection.⁸

India, with 1.21 billion people is the second most populous country in the world, while China is on the top with over 1.35 billion people. The figures show that India represents almost 17.31% of the world's population, which means one out of six people on this planet live in India. Every year, an estimated 26 millions of children are born in India which is nearly 4 million more than the population of Australia. It is significant that while an absolute increase of 181 million in the country's population has been recorded during the decade 2001-2011, there is a reduction of 5.05 millions in the population of Children aged 0-6 years during this period. The decline in male children is 2.06 million and in female children is 2.99 millions. The share of Children (0-6 years) in the total population has showed a decline of 2.8 points in 2011, compared to Census 2001. In 2011, the total number of children in the age-group 0-6 years is reported as 158.79 million which is down by 3.1% compared to the child population in 2001 of the order of 163.84 million. The share of children (0-6 years) to the total population is 13.1% in 2011 whereas the corresponding figures for male children and female children are 13.3% and 12.9%.⁹

India's commitment to the child as contained in its Constitution and several other national and international legal instruments that are binding on the nation, falls short of realization despite, various programmes and policies being in place. The implementation of these programmes and policies pose a serious challenge in the face of growing numbers of children in difficult circumstances and absence of adequate financial commitment to child protection.¹⁰

While exact and precise data on all these categories of children is not known, a situational analysis based on whatever information is available is imperative for planning for children in difficult circumstances. Even after 65 years of independence and government functioning, little attempt has been made to respond to the needs of children in need of care and protection. The minimal government structure that exists is rigid and a lot of time and energy goes in maintaining the structure itself rather than concentrating on programmatic outcomes.¹¹

The Ministry of Women and Child Development deals with child protection schemes including a Programme for Juvenile Justice, an Integrated Programme for Street Children, Childline Service, Shishu Greha Scheme, Scheme for Working Children in Need of Care and Protection, Rajiv Gandhi National Crèche Scheme for Children of Working Mothers and Pilot Project to Combat Trafficking of Women and Children for Commercial Sexual Exploitation. An examination of these schemes has revealed major shortcomings and gaps in the infrastructure, set-up and outreach services for children.

Some of the general gaps in the juvenile protection services may be summarized as follows:

- Inadequate implementation of laws and legislations. Mechanisms and structures prescribed by legislations are not in place to enable effective implementation;
- No mapping has been done of the children in need of care and protection or of the services available for them at the district/city/state level;
- A large percentage of children in need of care and protection are outside the safety net and have no support and access to services;
- Existing Schemes are inadequate in outreach and funding, resulting in marginal coverage of destitute children and children in difficult circumstances;
- Allotment of negligible resources to child protection and uneven geographical spread in utilization of allotted resources;
- Overbearing focus on institutional services with non-institutional services being negligent;
- Lack of coordination and convergence of programmes/services;
- Inter-state and Intra- state transfer of children especially for restoration to their families have not been provided for in the existing schemes;
- Lack of professionally trained manpower for providing child protection services in the country, especially counseling services ;
- Lack of lateral linkages with essential services for children for example education, health, police, judiciary, services for the disabled, etc.

This situation analysis presents available data on certain child protection issues and categories of children in difficult circumstances, factors responsible for the vulnerable situations in which children find themselves and key areas of concern. The analysis also reveals the large gaps in data, both in quantitative data but more significantly, also on qualitative data and the range and nature of protection issues like abuse, violence, conflict, displacement, to name a few. As with all measures for child rights, protection must be customized to age specific entitlements and needs.

The 1974 National Policy for Children pledges caring and protective attention to the child both before and after birth. Today this policy provision needs to be fulfilled.¹²

A society and community influenced by 'son preference,' Social /community support for early disposal; Unplanned negative impact of family planning messages for small family / 2 child norms; Persistence of child marriage; Emerging sale/ 'export', and traffickers' use of cover of pseudo marriages; Social silence about domestic violence, household abuse, "sex exploitation;" Vulnerability relating to the caste/community/ cultural identity of the girl child; Lack of enabling education and socialization of girls.

A serious and pervasive barrier to protecting girl children is their negative socialization to subservience, and their training not to question their status, condition or treatment. There is need for a new programming investment, to offer girls openings to alternative socialization. School education can offer the girl child information and ideas, protecting them against such indoctrination and the blockages of custom and attitude. The social education of boy children towards a better understanding of parity and justice is equally important. Children can learn to defend themselves, and also to protect one another, but genuine social self-defense cannot happen in an adverse or indifferent climate.

There is need to consider what happens to girl children rescued or recovered from exploitation or abuse. The proper mechanism for recovery as well as rehabilitation need to be developed. Social protection theory speaks of a caring community or a protective environment. Existing schemes tend to emphasize restoration to the family setting. In the case of a very young girl child, rescued from early marriage, abduction, sale or the sex trade, or a young victim of domestic trauma, or rape, or a child recovered from a hostility/conflict zone: the family of origin may not be the best option available for re- location. Effective and proper mechanisms are essential for ongoing contact, shelter, counseling (including family counseling), and possibility of foster or alternate placement, re-entry into local life and activities, re-entry into schooling or development programmes and for any prosecution of offenders that should officially be undertaken.¹³

Child protection services on the ground, with integrated coordination being planned at district level will have to exercise special vigilance on the situation of girl children in every community. They will need to devise special needed approaches to serve girl children at all stages of childhood. A potential preventive lies in the provision of meaningful development opportunity to girls and importantly in the adoption of a programming approach and initiatives that would generate and sustain ongoing contact with young girls in the community. Lateral linkages between protection and development programming are key inputs to needed change. It is in the community and development settings that an alerting mechanism must emerge and operate. The newly created Ministry of Women and Child Development has taken charge of child protection programs transferred from the Ministry of Social Justice and Empowerment. In addition to its nodal function on all policy issues related to children and the implementation and monitoring of CRC, the Ministry now has

the primary responsibility for planning, implementation and coordination of child protection services. However, child protection is not the exclusive responsibility of the Ministry of Women and Child Development; other sectors have a vital role to play. The Ministry is therefore looking at child protection holistically and examining how to rationalize programmes and approaches for creating a strong protective environment for children, diversify and provide essential services for children, mobilize inter-sectoral response for strengthening child protection and set standards for care and services.

The Constitution of India recognizes the vulnerable position of children and their right to protection. Therefore, following the doctrine of protective discrimination, it guarantees¹⁴ 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 and the right against exploitation enshrined in Articles 14,15,16,17, 21, 23 and 24 further reiterate India's commitment to the protection, safety, security and well-being of all its people, including children".

The Chapter on Directive Principles of State Policy in the Constitution of India enjoins that the State shall, in particular, direct its policy towards securing :

- That the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter a occupation unsuited to their age or strength.
- Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.
- That the State shall Endeavour to provide early childhood care and education to all children until they complete the age of six ages.

India's National Policy for Children 1974 provides a framework for policy and planning for children. In 1992 India acceded to the United Nations Convention of the Rights of the Child (UNCRC), committing to take measures to ensure the survival, protection, participation and development of its children. At the World Summit for Children in 1990 India adopted the World Declaration for Survival, Protection and Development of Children. Additionally, India ratified the Optional Protocols on the Use of Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography in 2005. It also reaffirmed its commitment to children by adopting the Millennium Development Goals and a World Fit for Children. Moving towards its commitments, the Government of India introduced the National Charter for Children 2003, which stipulates the duties for the State and community, followed by a National Plan of Action for children in 2005, which ensures collective commitment and action towards the survival, development, protection and participation of children by all sectors and levels of government and civil society. India has also signed the SAARC Convention on Combating Trafficking and Commercial Sexual Exploitation of Women and Children, 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 and is signatory to the SAARC decade on the Rights of the Child 2001 – 2010, decided in Rawalpindi Resolution on Children in South Asia in 1996.

Despite such clear commitments to child protection enshrined in the Constitution of India and the UN Convention on the Rights of the Child ratified by India in 1992, and the two Optional Protocols ratified in 2005, and the various national and international commitments made, children continue to remain vulnerable with the number of those needing care and protection is ever increasing.

Five decades of planned development indeed failed to address the critical issue of 'Child Protection'. And in these recent years a lot has changed in the lives of people, particularly children that calls for a re-examination of the understanding of 'Child Protection' itself.

'Child Protection' needs to be understood in terms of who are the children who need to be protected, from what/whom and how? Every child has a right to protection. This not only includes children who are in difficult circumstances and those who have suffered violence, abuse and exploitation but also massive, under-recognized and under-reported barriers to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of shortened lives, poor physical and mental health, educational problems (including dropping out of school), poor parenting skills later in life, homelessness, vagrancy and displacement. Conversely, successful protection increases a child's chances to grow up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.

The Government's approach to child protection so far has addressed largely those children who have already missed the protective net and fallen into difficult circumstances. Unfortunately the current coverage falls short of reaching the most vulnerable because the interventions through the existing schemes do not cover all the categories of children in difficult circumstances. Even where the interventions exist, for instance, institutional care for children in difficult circumstances, there is much room for improving the infrastructure and expanding the outreach. The quality of services need up-gradation and regional imbalances

need to be addressed.

For building on a comprehensive understanding of children's right to protection, it is important to adopt both a preventive and a protective approach to child protection.

The preventive approach—in all these years, application of the preventive approach has been limited to programmes like awareness generation, media advocacy, training and capacity building of various stakeholders, legal literacy, sex education in schools etc. The need of the hour calls for a wider outlook that must go beyond the conventional prevention strategies and also take into account the link between child protection and other micro and macro development issues. Such a holistic understanding of prevention alone can help keep children within the protective net. Such a protective approach includes mapping of areas to identify potentially vulnerable families and families with risky behavior, where children are more vulnerable or likely to come into vulnerable situations. Strengthening the families and family environment must follow. Lateral linkages with different sectors viz. Education, Health, Rural Development, Labour, Urban Affairs, Legal Affairs, Home Affairs etc. and different Departments and Ministries of Central and State Governments, including Local Self-Government, PRISs etc. need to be strengthened. A rights-based approach calls for addressing the root causes of any social problem. It is also important that partnership with civil society is strengthened for all stages of planning, implementation and monitoring child protection initiatives. Therefore, a proactive preventive approach as discussed above is inevitable.

The protective approach is to deal with situations post-harm and must include immediate as well as long-term protection strategies for all children who need it, including programmes for their physical and psychological recovery, rehabilitation and reintegration, legal aid and access to justice through child-friendly laws and procedures, and clear standards for protection of every individual/family/institution dealing with children.

It is critical to invest in child protection as protection failures are not only human rights violations, but are also major, under-recognized, under-reported and under-acted upon barriers to child survival and development. In addition, the links between protection and other development targets accepted by the country need to be explicitly stated and understood in order to address appropriately the concerns for achieving these and to invest in accordance with the need and magnitude of the problem.

The Legal Definition of a Child or Juvenile:

Age determination is a very complex issue. There have been some recent judgments on this issue. The supreme court has held that on the point of proof of age, school leaving certificate is the best evidence and so far as the medical certificate is concerned, the same is based on estimate, and possibility of error cannot be ruled out.¹⁵ However, regarding date of birth, the secondary school certificate is not to be taken to be correct unless corroborated by parents who got the same entries made.¹⁶

According to Sec. 2(k) of Juvenile Justice (care and protection of children) Act, 2000 “**Juvenile**” or “**child**” means a person who has not completed 18 years of age.¹⁷ In India the national policy for children declares that the nation's children are the super most important asset. This national asset has to be well preserved against all odds and at all cost if we want our future to be safe. But the future of modern societies seems to be in dark because every society is plagued and afflicted by the delinquent and anti-social behaviour of the children which has penetrated deep and has taken firm roots in almost all the segments of the modern societies.¹⁸

In India, childhood has been defined in the context of legal and constitutional provisioning, mainly for aberrations of childhood. It is thus a variable concept to suit the purpose and rationale of childhood in differing circumstances. Essentially they differ in defining the upper age-limit of childhood. Biologically, childhood is the span of life from birth to adolescence. According to Article 1 of United Nations Convention on the Rights of the Child (UNCRC), “A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” The definition of the child as given by the United Nations Convention on the Rights of the Child (UNCRC) has definite bearing not only on child development programmes and on budgetary provisions for them, but also on production of statistics as applicable to different cross-sections of children in terms of reference ages.

A child domiciled in India attains majority at the age of 18 years. However, various legal provisions address children with differing definitions. The age-groups of 0- 14 years, 15-59 years and 60 and above years form a commonly accepted standard in reporting demographic indicators. The child related legal and constitutional provisions are kept in view while statistics are generated for different cross-sections of children that align with specific age-groups standing for specific target groups of children such as, child labourers, children in school education, children in crimes, etc.

United Nations Convention on the Rights of the Child (UNCRC), adopted by the United Nations General Assembly in 1990, is the widely accepted UN instrument ratified by most of the developed as well as developing countries, including India. The convention provides standards to be adhered to by all State Parties

in securing the best interest of the child and outlines the fundamental rights of children.

The legal conception of a child has thus tended to vary depending upon the purpose. According to Article 1 of the United Nations Convention on the Rights of the Child 1989, 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'.¹⁹ The Article thus grants the discretion to individual countries to determine by law whether childhood should cease at 12, 14, 16 or whatever age they find appropriate. In India, the age at which a person ceases to be a child varies in different laws.

Thus, it can easily be said that the best evidence for determination age is the birth certificate or the school certificate and in case it is available, that would be considered the best evidence, and so far as the medical evidence is concerned, since it has margin of error, it would be taken into consideration only when primary evidence which is found in the birth certificate or school certificate is not available.²⁰

If it is not clear as under what provision of law, the school register is maintained, the entries made in such a register cannot be taken as a proof of age of the person concerned for any purpose.²¹ In a Supreme Court Judgement, it has been held that entries in birth register made by the official concerned in discharge of his official duties are admissible evidence under Section 35 of the Indian Evidence Act.

Juvenile Justice (Care and Protection of Children) Act 2000:-

The following are the points that have been decided in cases under the Juvenile Justice (Care and Protection of Children) Act 2000.

1. When the school leaving certificate shows the age of the child as below 18 years, but arrest memo shows it as 18 years, the court should first enquire about the current age of the child. The order of rejecting the bail without such inquiry in respect of the age in Narcotic Drugs and Psychotropic substances Act is improper.²²

2. If the age of the accused during the recording of the statement under Section 313 of the Criminal Procedure Code is 22 years, but was 'juvenile' at the time of commission of the offence, he must be treated as 'juvenile' for sentencing purposes.²³

3. When there are various dates in various documents of the accused, viz., two sets of school certificates, ration card, voters list and medical report, the concurrent finding of the fact by both the courts (that the accused is above 16 years is in the instant case, arisen on the Juvenile Justice Act 1986) based on the material on record cannot be disturbed.²⁴

4. If any proceeding is pending on the date of enforcement of the new Act, that proceeding shall be concluded under the provisions of the old Act. However, Section 20 of the new Act provides that in case the court finds that the accused was juvenile and he committed the offence, the court shall record its finding, but shall not pass any sentence and send the juvenile to the Board for appropriate orders. The sending of juvenile before the Board would arise after the conclusion of the trial and finding that the accused had committed the offence. But it is clear that except the said procedure, the provisions of the new Act would not be except the said procedure, the provisions of the new Act would not be applicable to the above proceeding.²⁵

5. The Additional Chief Judicial Magistrate in the state of Bihar is competent to hold an enquiry under Section 4 of the new Act for the purpose of determining the age of the juvenile.²⁶

6. The new Act is not applicable to pending cases, only if trial is pending on the date of enforcement of the Act, which is 1 April 2001. Even though persons between the ages of 16 and 18 have been brought within the definition of 'juvenile' under the new act, a person who has not been held to be juvenile under the old Act being above 16 years, cannot be treated as a juvenile under the new Act even if he is below 18 years.²⁷ Bail cannot be refused to the juvenile merely because he has been charged with having committed a heinous offence triable exclusively by a court of sessions.²⁸

7. Court should not guess about the existence of ground for refusal of bail. Those grounds should be substantiated by some evidence on record.²⁹

8. Plea of juvenility can be taken anytime even before the appellate court.³⁰

9. Conduct of trial of 'juvenile' by the sessions court without first enquiring his age in order to ascertain as to whether he is 'juvenile' or not is not proper and Rajasthan High Court directed the sessions judge first to conduct an enquiry about the age of the accused and if he is found juvenile, then to forward the relevant record to the competent court, and if found otherwise, to decide sessions case as per the law.³¹

10. The provisions of the Act would be applicable even to those cases initiated and pending for offences committed under the Act of 1986 provided the offender has not completed 18 years of age as on 1 April 2001.³²

11. The reckoning date for determination of age of juvenile offender is the date of offence and not the date when he is produced before the court competent authority.³³

12. Considering the difficulty of transportation of juveniles from far-off places for trial and considering the fact that only 5 Juvenile Justice Boards were constituted to deal with the entire state of Karnataka, the

high court directed the State government to consider the necessity of establishing one Board for each district.³⁴

13. The Board has exclusive power to deal with trial of juveniles in conflict with law. To that extent, jurisdiction of any court including that of session's court or fast track court is barred.

14. A juvenile was not presented before the court on various dates. The copy of order of the court declaring the petitioner to be juvenile and directing to shift him to observation board was misplaced by the jail authorities. So, the juvenile had to remain in an adult jail for 25 months. The juvenile was granted compensation of rupees one lakh.³⁵ In the same case, the Bombay High Court had directed the sessions court and magistrates courts to get compliance report of their orders in 6 weeks in all cases where bail is granted to avoid such incidents.

15. The session courts cannot refuse to make enquiry for purpose of determination of the age of alleged juvenile offender on the sole ground that a Board is constituted.³⁶ If the accused had admittedly opened an account in a bank, his contention that he was a minor at the time of the commission of the offence cannot be accepted because he could not have an open account, had it been so.³⁷

16. While dealing with the question of determination of age of the accused, for the purpose of finding out whether he is a juvenile or not, hyper-technical approach should not be adopted while appertaining the evidence adducted on behalf of the accused in support of the plea that he was a juvenile in borderline cases.³⁸

17. Proper care is expected from all the agencies, institutions and the government to ensure that necessary effort is made to take appropriate and prompt steps to provide necessary infrastructure and opportunity for reformation of juvenile and not to allow them to become hardened criminals.³⁹

Constitutional Provisions for Children in India:-

Several provisions in the Constitution of India impose on the State the primary Responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Children enjoy equal rights as adults as per Article 14 of the Constitution. Article 15(3) empowers the State to make special provisions for children. Article 21 A of the Constitution of India directs the State to provide free and compulsory education to all children within the ages of 6 and 14 in such manner as the State may by law determine. Article 23 prohibits trafficking of Human beings and forced labour. Article 24 on prohibition of the employment of children in factories etc, explicitly prevents children below the age of 14 years from being employed to work in any factory, mine or any other hazardous form of employment. Article 39(f) directs the State to ensure that children are given equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against moral and material abandonment. Article 45 of the Constitution specifies that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. Article 51A clause (k) lays down a duty that parents or guardians provide opportunities for education to their child/ward between the age of 6 and 14 years. Article 243 G read with schedule-11 provides for institutionalizing child care to raise the level of nutrition and the standard of living, as well as to improve public health and monitor the development and well being of children in the Country.

Union Laws Guaranteeing Rights and Entitlement to Children:-

A fairly comprehensive legal regime exists in India to protect the rights of Children as encompassed in the Country's Constitution. The age at which a person ceases to be a child varies under different laws in India. Under the Child Labour Prohibition and Regulation Act, 1986, a child is a person who has not completed 14 years of age. For the purposes of criminal responsibility, the age limit is 7 (not punishable) and above 7 years to 12 years punishable on the proof that the child understands the consequences of the act, under the Indian Penal Code. For purposes of protection against kidnapping, abduction and related offences, it's 16 years for boys and 18 for girls. For special treatment under the Juvenile Justice (Care and Protection of Children) Act 2011, the age is 18 for both boys and girls. And the Protection of Women from Domestic Violence Act 2005 defines a child as any person below the age of 18, and includes an adopted step- or foster child.

II. CRIME AGAINST CHILDREN

There is no separate classification of offences against children. Generally, the offences committed against children or the crimes in which children are the victims are considered as Crime against Children. Indian penal code and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are victims. The age of child varies as per the definition given in the concerned Acts and Sections but age of child has been defined to be below 18 years as per Juvenile Justice Act, 2000. Such offences are construed as crimes against children for the purpose of analysis in this chapter.

How vulnerable are children in India to crime? An analysis by Child Relief and You (CRY), released this week, paints a rather grim scenario.

The report reveals that crimes against children rose by 20 per cent –higher than overall number of crimes which rose by 3.6 per cent.

The CRY analysis is based on the latest National Crime Records Bureau for 2016-2017 data released on October 21, 2019 after a gap of two years.

Uttar Pradesh and Madhya Pradesh had the dubious distinction of topping the list of States for overall crimes against children. Both stood at 14.8 per cent with over 19,000 cases. Jharkhand saw the highest increase in crimes against children at 73.9 per cent while Manipur had a significant decline of 18.7 per cent between 2016 and 2017.

Among crimes against children, kidnapping and abduction continued to be the most prevalent accounting for 42 per cent of the total 1,29,032 cases of crime reported. The other major crimes against children include violations of the Protection of Children from Sexual Offences (POCSO) Act, rape, sexual assault and procuring of minor girls.

Child labour and child marriages:-

Child labour also saw a substantial increase of 126 per cent, with the NCRB report listing 462 cases of child labour in 2017 against 204 in 2016. As for child marriage NCRB records 395 cases registered under the Prohibition of Child Marriage Act (PCMA) 2006. This shows that there has been an increase of 21.17 per cent in the reporting.

The CRY analysis sees this as a positive development. “The increase in reported cases of child marriage and child labour can be deemed as a positive development since both the issues often get social sanction and go unreported,” points out the analysis while emphasising that there is an urgent need for increased attention to the issue of child protection given the increasing rate of crime against children.

“Clearly, a lot more has to be done to protect children,” said Priti Mahara, Director – Policy Advocacy and Research, CRY.

Mahara added, “There is a need to increase financial investments in child protection with a focus on prevention of crimes against children. Also, we need to facilitate convergence between government and civil society to generate awareness about redressal mechanism in the community, capacity building of officials in the child protection system like police, child welfare committees and facilitate the creation of a conducive, safe environment to increase reporting of crimes against children.” Kidnapping and abduction continue to be the most prevalent accounting for 42 per cent of the total 1,29,032 cases of crime reported.

It is also to be borne in mind that the offences that are analysed in this chapter do not form an exclusive block of offences that are reported in the country. They are included in the IPC/SLL cases already discussed in other relevant chapters. The offences mentioned in this chapter have been culled out from various reported crimes in the country wherein the victims of the offences were children.

The data on crimes against children is compiled through the revised annual returns w.e.f. year 2001. Cumulative totals of crime statistics available on monthly basis were used for this analysis till 2000. The revised annual returns have additional heads like ‘murder of children’ and ‘other crimes’, therefore, incidents of crimes against children during 2001 and later years may not be comparable with the figures of year 2000 and before.

The cases in which the children are victimised and abused can be categorised under two broad sections:

- 1) Crimes committed against Children which are punishable under Indian Penal Code (IPC).
- 2) Crimes committed against Children which are punishable under Special and Local Laws (SLL).

1. Crime against children punishable under ‘Special and Local Laws’ are:

- a) Immoral Traffic Prevention Act, 1956 (where minors are abused in prostitution).
- b) Child Labour (Prevention & Regulation) Act, 1986.

Crime Incidence : A total of 33,098 cases of crimes against Children were reported in the country during 2011 as compares to 26,694 cases during 2010, suggesting an increase of 24.0%. Among IPC crimes, number of cases under Procuration of Minor Girls increased from 679 in 2010 to 862 in 2011, registering an increase of 27.0% over 2010. Cases of Kidnapping & Abduction increased by 34.2% during the year (from 10,670 in 2010 to 15,284 in 2011). Uttar Pradesh (5,500), Madhya Pradesh (4,383), Delhi (4,250), Maharashtra (3,362), Bihar (2,233) and Andhra Pradesh (2,213) have accounted for 16.6%, 13.2%, 12.8%, 6.7% and 6.7% of total crimes respectively against children at the National level.

Crime Rate : The crime rate has marginally increased from 2.3 in 2010 to 2.7 in 2011. The rate was highest in Delhi (25.4) followed by A & N Islands (20.3), Chandigarh & Chhattisgarh (7.0 each), Madhya Pradesh (6.0) and Goa (5.1) as compared to the National average of 2.7.

Crime head-wise Analysis: The State/UT-wise and crime head-wise incidents of crimes are presented in the table given in this chapter.

1. **Murder (Including Infanticides)⁴⁰:** A total of 1514 cases of Murder of children (including infanticides) were reported in the country against 1,508 cases in 2010 resulting in an increase of 0.4% in 2011 over 2010. Uttar Pradesh has reported the highest number of such cases (326) accounting for 22.9% of the total cases reported in the country. Arunachal Pradesh, Mizoram, Daman & Diu, Lakshadweep and Pondicherry did not report any case of child murder during the year 2011.
 2. **Infanticide⁴¹:** A total of 63 Infanticide cases were reported in the country during the 2011. The incidents deceased in the year 2011 (63 cases) from 100 cases in the year 2010. The decrease amounted to 37.0% over 2010. All 63 cases were reported Uttar Pradesh and Madhya Pradesh accounted for 13 cases each of the 63 cases reported at National level.
 3. **Rape⁴²:** A total of 7,112 cases of child rape were reported in the country during 2011 as compared to 5,484 in 2010 accounting for an increase of 29.7% during the year 2011. Madhya Pradesh has reported the highest number of cases (1,262) followed by Uttar Pradesh (1088) and Maharashtra (818). These three States altogether accounted for 44.5% of the total child rape cases reported in the country.
 4. **Kidnapping & Abduction⁴³:** A total of 15,282 cases of Kidnapping & Abduction of children were reported during the year 2011 as compared to 10,670 cases in the previous year accounting for a significant increase of 43.2%. Uttar Pradesh (3,739) followed by Delhi (23,528) has accounted for 24.5% and 23.1% respectively of the total cases reported in the country. The rate of crime was also highest in Uttar Pradesh (24.5) followed by Delhi (23.1) as compared to the National average of 1.3.
 5. **Foeticide⁴⁴:** A total of 132 cases of Foeticide were reported in the country during 2011 as compared to 111 cases in the year 2010 indicating a rise of 18.9% in these cases. Punjab, Rajasthan and Uttar Pradesh have reported 38 cases, 21 cases, 15 cases, 13 cases and 12 cases respectively of such crime.
 6. **Abetment to Suicide⁴⁵:** 61 cases of Abetment to Suicide by children were reported during the year 2011 as compared to 56 cases in the year 2010 denoting an increase of 8.9% during the year 2011.
 7. **Exposure & Abandonment⁴⁶:** A total of 700 cases were reported during 2011 as compared to 725 cases during 2010 showing a decline of 3.4% during the year 2011. Maharashtra (27.0%) has reported the highest number of such cases (189), followed by Gujarat (15.0%) (105 cases) of the total cases reported in the country.
 8. **Procuration of Minor Girls⁴⁷:** 862 cases were reported in the year 2011 as compared to 679 such cases in the year 2010, accounting for 27.0% increase over 2010. West Bengal has reported 298 such cases indicating a share of 34.6% at National level followed by Bihar (183), Assam (142) and Andhra Pradesh (106). An increasing trend was observed in these cases during the last three years. Details are given at the table in this chapter.
 9. **Buying of girls for Prostitution⁴⁸:** 27 cases of 'buying of girls' for prostitution was reported in the country during the year 2011 and 78 cases in 2010. Maharashtra (20 cases) has accounted for 74.0% of total 27 cases of 'buying of girls for Prostitution' in the year 2011.
 10. **Selling of girls for Prostitution⁴⁹:** 113 cases of 'selling of girls' for prostitution was reported in the country during the year 2011 and 130 cases in 2010. West Bengal has accounted 77% (87 cases out of 113 cases) of the total cases of 'selling of girls for prostitution' reported in the country in the year 2011.
 11. **Other Crimes (including prohibition of Child Marriage Act 2006):** 7293 cases of other crimes including prohibition of Child Marriage Act 2006 were reported in the country during the year 2011 and 7523 cases were reported in the year 2010 and there is 1% variation in 2011 over 2010.
- Disposal of crimes by Police & Courts:** The average charge-sheeting rate for all the crimes against children (IPC & SLL) was 82.5% in 2011, which was the same in 2010 as well. The highest charge-sheet rate was observed in cases under 'Buying of Girls for Prostitution' (100%) followed by 'Rape' (97.3%) in comparison to the prevailing National level charge-sheeting rate of 78.8% for the IPC crimes and 93.4% for SLL crimes. The lowest charge-sheet rate was found in cases of 'foeticide' (26.1%). The conviction rate at the National level for these crimes stood at 34.6%. The conviction rate for 'Infanticide' (other than Murder) was highest at 46.9% followed by cases under 'Murder' (45.5%).
- Disposal of Persons Arrested by Police & Courts:** 31,002 (71.5%) persons out of 43,383 persons arrested for these crimes were charge-sheeted by the police and correspondingly, only 6,643 persons were convicted representing 33.6% conviction rate of persons arrested, which is marginally lower than conviction rate (case-wise) for crimes committed against children (34.6%).

III. CONCLUSION:-

It is to be noted that to explore the status of children in our society and the problems of the children in India with legal, administrative and judicial perspectives. This study is a compilation of data, collected from literature, on current facts and figures which can be used by any other researcher for future research. The findings and the suggestions of this study can be used by the law making bodies, law implementing officials and

the future researchers. The findings and the suggestion of this study would be significant as they would depict the ground reality of the violence and offences against children in India.

Hence, the research is conducted with a noble vision. Nowhere is the wide chasm between the letter of the law on the one hand and the implementation of the law on the other so clearly perceived than in the enforcement of the rights of the child.

The Indian Constitution protects the child. The convention for the Rights of the Child has been ratified by India. Child labour is protected by statute and yet millions and millions of children in India are grossly exploited and employed in hazardous industries. Half of the nation's children are mal-nourished. Child abuse is rampant. Poor children will remain illiterate without ever a chance of finishing even primary school. Disabled children are even worse off. And minor girls are trafficked on an ever increasing scale. Juveniles are often subjected to the worst type of crimes in the society.

This work is an attempt to integrate the law in theory and field practice. It provides the important legislations and judgments on the subject along with the initiatives for legal reforms, interventions and international legal trends. The approach is multidisciplinary and highlights various relevant regional and international mechanisms and international standards of behaviour towards children, examines and recognizes the inadequacies in laws and procedures. And finally it focuses on some legal strategies and law reform recommendations to be carried at all levels – from local to national.

The issues addressed in this work include crimes against juveniles as a whole, from child labour, child sexual abuse and trafficking, juvenile justice, education, health and nutrition of children to their right to play and recreation. The work also contains important findings from many research studies, articles and field experiences.

Law concerning children—like most laws will inevitably remain flawed, inadequately observed and in need of constant revision. Clearly, children do not receive “the best that mankind has to offer” but they can be shielded from the worst. There is the strong evidence of the existence of well-established legal principle – set out in various human rights and humanitarian legal instruments and constitutions that children as such are entitled to special treatment. The governments at the global level have made a commitment to put children at the top priority which is yet to be achieved. Their rights are non-negotiable. However, it is the governments that will have to take initiative to put the children first.

REFERENCES

- [1]. Gupta Shrinivas, “Rights of the child to education in India” (article) Indian Bar Review Vol. 29 (2) 2002.
- [2]. Gupta Shrinivas, Legal Attitude towards child Education, “Published in CILQ 1994, Vol. VII, p. 432.
- [3]. Ahmad Manzoor, “Basic Education and National Development (1991) UNICEF Publications).
- [4]. See also Gupta Shrinivas, “Rights of the Child : International Perspective. “Published in 2 Burdwan Law Review (1996).
- [5]. See Prof. Karl. Eric Knutsson’s Key Note Address to National Seminar on “Right of the Child : Sociological Perspectives” held on Sept. 15-16, 1994 at Kathmandu
- [6]. Arunima Baruah “Crimes Against Children,” 2002 edition Kalpaz Publications New Delhi, p. 9.
- [7]. Ibid, p. 10.
- [8]. See sub group report, child protection n in the Eleventh Five Year Plan (2007-2012), Ministry of Women and Child Development, Govt. of India, Shastri Bhawan, New Delhi, 2012, p. 17.
- [9]. See Census, India, Office of Registrar, General of India, 2012.
- [10]. See sub group report, child protection n in the Eleventh Five Year Plan (2007-2012), Ministry of Women and Child Development, Govt. of India, Shastri Bhawan, New Delhi, 2012, p. 17.
- [11]. Naik Varun, Shahni Mukesh, : Chiledren and Human Rights, 1st Print, 2011, Crescent Publishing Corporation, New Delhi, p. 39.
- [12]. See sub group report, child protection n in the Eleventh Five Year Plan (2007-2012), Ministry of Women and Child Development, Govt. of India, Shastri Bhawan, New Delhi, 2012, p. 17.
- [13]. Naik Varun, Shahni Mukesh, :”Chiledren and Human Rights, 1st Print, 2011, Crescent Publishing Corporation, New Delhi, p. 40.
- [14]. See Article 15 Constitution of India.
- [15]. Bhoop Ram v. State of U.R. AIR 1989 SC 1329; Rajan and Ors. V State of Rajasthan 2002 CriLJ 3152; Ram Sanchi Pandey v. U.P. Rajya Vidjut Parishad and Ors 2004 (2) AWC 1211; Pratap Singh v. State of Jharkhand and Anr AIR 2005 SC 2731.
- [16]. Biradmal Singhvi v. Anand Purohit AIR 1988 SC 1796; Tara Devi v. Sudesh Choudhary AIR 1998 Raj 54 (DB); Ram Sanchi Pandey v. U.P. Rajya Vidjut Parishad and Ors 2004 (2) AWC 1211.
- [17]. Act, Juvenile Justice (Care and Protection of Children) Act, 2000.
- [18]. Tait Downing C., “Delinquents, their families, and the community” 1962, p. 18.
- [19]. Article 1 of U.N. Convention on the Rights of the Child, 1989.

- [20]. Rajan and Ors. v. State of Rajasthan 2002 CriLJ 3152.
[21]. Ramdeo Chauhan v. State of Assam AIR 2001 SC 2231.
[22]. Manoharlal v. State of Rajasthan 2002 CriLJ 394.
[23]. Chandrika Kumar and Ors. v. State of Bihar 2002 CriLJ (NOC) 38 (Patna) (2001) 1 BLJ 614.
[24]. Mehmood Khan v. The State 2002 CriLJ 2123.
[25]. Lallan Singh v. State of U.P. and Anr 2002 CriLJ 1242.
[26]. Abhishek Singh v. State of Jharkhand 2002 CriLJ 3801.
[27]. Vijay Singh and Anr. v. State of U.P. 2003 CriLJ 3461.
[28]. Vikky alias Vikram Singh v. State of U.P and Ors 2003 CriLJ 3457.
[29]. Sanjay State of U.P. 2003 CriLJ (NOC) 252; 2003 AILLJ 2378 (reasons are necessary for refusing the bail).
[30]. Munshi Khan v. State of Rajasthan 2004 CriLJ 3465 (Rajasthan).
[31]. Ratanlal alias Ram Ratan v. State of Rajasthan 2004 CriLJ 734.
[32]. Pratap Singh v. State of Jharkhand and Anr 2005 CriLJ 3091; see also Bijender Singh v. State of Haryana 2005 CriLJ 2135.
[33]. Pratap Singh v. State of Jharkhand and Anr. 2005 CriLJ 3091.
[34]. State of Karnataka v. Harshad 2005 CriLJ 2357.
[35]. Master Salim Ansari and Anr. v. Officer-in-Charge Borivali Police Station Mumbai and Ors 2005 CriLJ 799.
[36]. Pankaj and Anr v. State of U.P. and Anr 2005 CriLJ 3683.
[37]. Om Prakash alias Raja v. State of Uttaranchal 2003 CriLJ 483.
[38]. Rajinder Chandra v. State of Chattisgarh and Anr (2002) 2 SCC 287.
[39]. Rahul Sharma v. State of Maharashtra and Anr 2005 AILMR (Cri) 1973.
[40]. Sec. 302 IPC and 315 IPC
[41]. Sec. 315 IPC
[42]. Sec. 376 IPC
[43]. Sec. 363 to 373 IPC
[44]. Sec. 315 & 316 IPC
[45]. Sec. 305 IPC
[46]. Sec. 317 IPC
[47]. Sec. 366A IPC
[48]. Sec. 373/372 IPC
[49]. Sec. 373/372 IPC

Dr. Naaz Akhtar Siddique. "Crimes Against Children: An Analytical Study." *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 26(08), 2021, pp. 59-70.