

Law, Justice and the Juvenile in India

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Abstract: In January, 2018 India has celebrated its 69th year of being republic with the leaders of Asian Countries and is going to celebrate its 72nd year of its Independence on August, 15th . Today throughout the world India is known as a nation of young generation. According to 'World Population Prospects: The 2015 revision' Population Database of United Nations Population Division, India has the world's highest number of 10 to 24 year olds, with 242 million and as per India's Census 2011, Youth (15 - 24 years) in India constitutes one - fifth (19.1%) of India's total population and is expected to have 34.33% share of youth in total population by 2020.i Thus, India can be termed as 'Yongistaan', the nation of young people. Not only is this it one of the fastest developing nations having unity in its diversity with Secularism as it's sole. But at the same time it is difficult to ascertain whether all this is as matter of pride for us or is of shame. However, being a Republic, Independent and Secular and Young nation it is prideful at one point of time but at the same time it is horrible and scary too. No doubt the present status of India is the fastest developing nation but it is not a fully developed nation. In fact it is a nation that is full of patriarchal norms & lusty beliefs.

Keywords: Law, Justice, Juvenile, India

I. INTRODUCTION

Recently a new survey of global experts ranked India as the most dangerous country in the world for women. Followed by, 2012 gang rape case of a medical student on the streets of Delhi in a running bus. "Delhi" though in "State's" records, is shown to be the Capital of India, but is known as the "Rape Capital" and today it is known as the "Rape Capital of the world". Not only Delhi other States of the Country such as Uttar Pradesh and Madhya Pradesh are as much as alike to Delhi as on June 26 evening, when an eight year old minor girl was waiting for her family members outside her school in Madhya Pradesh's Mandsaur in order to go home, someone abducted her and took her to the bus stand area and allegedly raped her in the bushes. The offender even tried to kill her by slitting her throat using a knife. So, what we have earned in last 72 years? Violence against women and children's mainly "Rapism" in particular. After the barbic incidence of 2012 gangrape, it was believed that justice would be fast – tracked and punishment made stringent, but it has only strengthened the belief there is no typical profile of a "Rapist". They are experts in rationalizing their behavior. The rape of 8 month old girl child by her 28 year old cousin in the Capital few days back is the proof of the same. The data published by "National Crime Records bureau" for the year 2016 shows that there were 89423, 94172 cases of crime against children in 2014 & 2015 and are 106958 cases of crime against children in 2016. In percentage terms, major crime heads under 'Crime Against Children' during 2016 were kidnapping & abduction (52.3%) and cases under the Protection of Children from Sexual Offences Act, 2012 (34.4%) including child rape. A total of 1, 11,569 children

(41,175 males and 70,394 females) were reported missing in which maximum children missing were reported from West Bengal (16,881 children) (4,595 males and 12,286 females) followed by Delhi UT (14,661 children) (6,125 males and 8,536 females) and Madhya Pradesh (12,068 children) (3,446 males and 8,622 females) during 2016. Out of total 1, 11,569 missing children during the year 2016, a total of 55,944 children (20,364 males and 35,580 females) were traced and 55,625 children (20,811 males and 34,814 females) were untraced at the end of the year (including previous year).ⁱⁱ This is the condition when for the 1st time the National Crimes Record Bureau; India has published this data for the 1st time in its history upon the directions of Hon'ble Supreme Court which were issued in the case of *Bachpan Bachao Andolan vs Union of India & ors*,ⁱⁱⁱ the NCRB has noted that In the absence of children population of metropolitan cities (RGI Census for 2011), the figures furnished by Ministry of Health & Family Welfare for the year 2014, have been taken into account for calculating the 'crime rate'.

II. RIGHTS OF A CHILD IN INDIA

In 1992 India ratified United Nations Convention on the Rights of a Child, 1989, on December 11, agreeing all its principles and articles except with certain reservations on issues relating to child labor.¹ Article 19 of the said Convention provides that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. Whereas, Article

¹ Multilateral Treaties Deposited with the Secretary-General, "Human Rights" Chapter IV

34 of the convention provides that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: -

- a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- b) The exploitative use of children in prostitution or other unlawful sexual practices;
- c) The exploitative use of children in pornographic performances and materials.

In 1997 India submitted its Initial Report on the implementation of the Convention on the Rights of Child. The Committee on the Rights of the Child had considered it January 2000 and had made specific recommendations to the government of India for implementation of the Convention. In the year 2000, The United Nations Committee on the Rights of the Child has conducted a preliminary examination of the first periodic report of the government of India on the implementation of the United Nations Convention on the Rights of the Child. The committee on the Rights of Child founded that the report is entirely uninformative about the actual status of the children in India and provides little information especially about the civil and political rights of children and the status of children who require special measures of protection. In its 500 pages report, the government of India has only repeated the aims and objectives of the constitutional safeguards, specific laws or programmes. The size of a report does not necessarily reflect the substance. The 500 pages report by the government of India is not only an attempt to impress upon the Convention on the Rights of the Child Committee but also an attempt to escape scrutiny.

The adoption of the Juvenile Justice (Care and Protection) Act of 2000 is one of the concrete measures taken by the government of India. But the government of India flaunts the enactment of the Act. However, the implementation the Juvenile Justice (Care and Protection) Act of 2000 remains problematic. A large number of State governments such as Punjab, Haryana, Jammu and Kashmir, Assam etc haven't set up the Juvenile Courts, Juvenile Boards or Juvenile Homes. In a reply to the Rajya Sabha 2 on 3 December 2001, Minister for Social Welfare stated that there are no juvenile detainees in Jammu and Kashmir and Manipur. But In reality, the Jammu and Kashmir State government haven't taken any measure to implement the Juvenile Justice Act of 1986, let alone replace it with Juvenile Justice (Care and Protection Act), 2000. The Jammu and Kashmir State Assembly extended Juvenile Justice Act, 1986 in the State by abolishing the Children Act of 1970 in the year 1997. However, as of August 2003, the

government of Jammu and Kashmir has not taken any initiative to implement the Juvenile Justice Act, 1986. The Juvenile detainees are being kept in District Jail of Jammu along with harden criminals. And the Punishments for sexual abuse of children were under the general criminal law of the Indian Penal Code 1860.

III. COMMISSION FOR PROTECTION OF CHILD RIGHTS IN INDIA

The National Commission for Protection of Child Rights in India came into existence in 2007, after the passing of the Commissions for Protection of Child Rights Act, 2005. Thereafter, various states established their State Commissions for Protection of Child Rights. The National Human Right Commission committee in its report on Missing Children's, 2007 had concluded that – that not much has been achieved to protect the rights of children in the last 60 years. There has been a plethora of documents in the form of plans, policies, programmes, schemes and the like brought forth by the Government since independence pledging to protect and promote the rights of children but the records of national governance, public investment and development action yield little matching evidence of substantive work for children. Given the situation of children, especially from underprivileged and vulnerable sections of society, the Committee is of the view that the Constitution of India has sufficient mandate to secure human rights of children.

IV. CHILD ABUSE IN INDIA

The Ministry of Women and Child Development of the Government of India conducted an official study on abuse of children in 2007 titled as "A Study on Child Abuse: India 2007" which encompassing 13 states of India. It found the prevalence of child sexual abuse to be high: 52.22% of children have faced one or more forms of sexual abuse and 21.90% of child respondents have faced severe forms of sexual abuse. Three evidence groups comprising of children on the street, children at work and children in institutional care reported the highest incidence of sexual assault. Fifty per cent of abusers were persons known to the child or in a position of trust and responsibility. Most children did not report the matter to anyone.² After the publication of this study, the government of India enacted an exclusive law i.e., "The Protection of Children against Sexual Offences Act 2012, also known as POSCO Act, the Act dealing with various types of child sexual abuse, it is considered as a landmark in the history of child rights in India because various sexual offences against children which previously did not exist in Indian criminal law were defined and criminalized for the first time.

² Study on Child abuse: India 2007, 91 (Ministry of Women and Child Development of the Government of

India, New Delhi)

In December 2012, the brutal gang rape of a female student in the Indian capital of Delhi and her subsequent death led to mass protests against the Indian government for failing to provide adequate security for women. On December 23 a judicial committee headed by J. S. Verma, a former Chief Justice of India, was constituted to look into the possible amendments to the criminal law to provide for quicker trial and enhanced punishment for the criminals committing sexual assault of extreme nature against women. The committee in its report concluded and suggested that the material before is sufficient for us to reach the conclusion that the age of 'juveniles' ought not to be reduced to 16 year and the authentic figures of missing children in India are not available for obvious reasons of the complicity of law enforcement agencies. Children have been driven into forced labour, sex abuse, sexual exploitation as well as made victims of illegal organ trade. Our report includes the testimonies of children (whose identities have been concealed for their safety) to verify facts from their personal experience. As a small gesture, this Committee has (at its own cost) taken necessary steps for proper rehabilitation and education of one of these children, payment of the minimum wages due to the said child, her safe passage and reintegration with her family, psychotherapeutic intervention, and to fulfill her educational aspirations. The Committee expects similar treatment by the State of all such deprived children. Juvenile homes in the country, i.e. child homes, and observation homes, are not being run in a manner consistent with the spirit of the Juvenile Justice Act. We are shocked to note that so many of these children have been forced into bonded labour and beggary, which is in violation of Article 23 of the Constitution. India should not permit cheap child labour to be an incentive for foreign investment to boost our economy. The nation has to account for the tears of millions of women and other marginalized sections of the society which has been ignored owing to institutional apathy. Any officer, who fails to register a case of rape reported to him, or attempts to abort its investigation, commits an offence which shall be punishable as prescribed. Offences of eve teasing, voyeurism, stalking as well as sexual assault and unsolicited sexual contact are also to be taken into account. The insensitivity of the police to deal with rape victims is well known. The police respect a patriarchal form of society, and have been unable to deal with extraordinary cases of humiliation and hardship caused by the khap panchayats, as is evident from various judgments of the Supreme Court. The police are involved in trafficking of children (including female children) and in drug trade. A special procedure for

protecting persons with disabilities from rape, and requisite procedures for access to justice for such persons is also an urgent need.

Soon after, the Criminal Law (Amendment) Act 2013 came into force, amending the IPC, Indian Evidence Act 1872, the Code of Criminal Procedure 1973 on laws related to sexual offences, as well as the POCSO. This amendment gave a new definition of the offence of "rape", as well as inserted new sexual offences like harassment and voyeurism. It also inserted a provision into the POCSO clarifying which provisions were to prevail in the case of conflict between the IPC and POCSO. Currently, statutes prosecuting child sexual abuse in India are the IPC and the POCSO.

V. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

An Act to deal with child sexual abuse cases, The Act came into force with effect from 14th November, 2012 along with the Rules framed thereunder. The Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage. It defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography,³ and deems a sexual assault to be - aggravated under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis - a - vis the child, like a family member, police officer, teacher, or doctor.⁴ Under the Act, the people who traffick children for sexual purposes are also punishable under the provisions relating to abetment,⁵ it prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.⁶ And it shall be presumed, unless and until the contrary is proved,⁷ that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized. The Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months "imprisonment and/ or a fine."⁸ Further it also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child

³ Section 2 (a) – (m), The Protection of Children From Sexual Offences Act, 2012

⁴ Section 5, The Protection of Children From Sexual Offences Act, 2012

⁵ Section 16, The Protection of Children From Sexual Offences Act, 2012

⁶ Section 6, The Protection of Children From Sexual Offences Act, 2012

⁷ Section 29, The Protection of Children From Sexual Offences Act, 2012

⁸ Section 21, The Protection of Children From Sexual Offences Act, 2012

are under an obligation of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the Child Welfare Committee may then proceed where required to make further arrangements for the safety and security of the child. The Act also makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. It states that the examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.⁹ The Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child - friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom.

Above all, the Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported.¹⁰ It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation. The Act also recognizes almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, it encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. Under Section 39 the Act, requires the State Governments to frame guidelines for the use of persons including non-governmental organizations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage.

VI. CONCLUSION

ⁱ Center Statistics office, "Youth in India 2017", 2 (Ministry of statistics and programme Implementation Government of India , Social Statistic Division, 2017)

The extent of violence against children is difficult to measure because much of it occurs in the privacy of family homes and is never reported or investigated. Relationship between the victim and perpetrator and differences in their age is another issue which makes it difficult. Thus it remains a challenge to determine factors that pose a risk for children being victims of sexual abuse. It is more difficult to assert that whether a particular behavior is sexually abusive or not. And the difficulties exist when the so-called child victim and the perpetrator belong to age groups within a five – year gap. Reports and statics show that the children in the pre - adolescent to adolescent ages are the most vulnerable. Not only against minor girls there is higher prevalence of sexual abuse of boys too. The problem faced before enactment of Protection of Children from Sexual Offences Act, 2012, was the absence of clear gender - neutral laws to protect girls and boys from sexual abuse. The provisions of the Act, to a large extent, seems to be been drafted consistently, coherently, and correctly, in accordance with the rule of law. The Amendment inserted via the criminal Law (Amendment Act 2013) in Section 42 and 42 A of the Act seems to gave clarity and certainty to the law on Sexual offences against children's in the country. But the rising number of sexual abuses against minor children's and new born babies on daily basis poses a question mark upon the credibility of the enactment itself as well as upon the willingness of the legislators to take curb the commission of such acts. However in the end of discussion the incidence of sexual abuses against Juvenile left all of us with the question that whether the legislation in the Country made positive advances in responding to child sexual abuse? The history of government attitude and reports speaks about inefficacy of the ruling governments of the relevant periods but under the shadow of "hope & will" the Justice, Verma Committee in its report on Amendments in Criminal Law, 2013, states that the existing laws, if faithfully and efficiently implemented by credible law enforcement agencies, are sufficient to maintain law and order and to protect the safety and dignity of the people, particularly women, and to punish any offenders who commit any crime. The committee further added that this is not to say that the necessary improvements in the law, keeping in mind modern times, should not be enacted at the earliest.

ⁱⁱ NCRB, *Crime against Children, Missing Persons & missing Children*, ix & xxiii (MHA, 2016, New Delhi)

ⁱⁱⁱ Writ Petition (C) No.75/2012, dated : 10/05/2013 , Supreme Court of India

⁹ Section 27, The Protection of Children From Sexual Offences Act, 2012

¹⁰ Section 35, The Protection of Children From Sexual Offences Act, 2012