

Child protection under juvenile justice laws

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Abstract- The research paper explores the evolution of India's juvenile justice system and its impact on juvenile delinquency, a critical societal issue. It traces the historical development from informal practices to formal legal frameworks. Factors contributing to juvenile delinquency are analyzed, along with an evaluation of current legal and rehabilitative measures. The paper concludes with recommendations for policy improvements and interventions aimed at addressing the challenges of juvenile delinquency in India.

1. INTRODUCTION

The juvenile justice system is a dynamic and enlightened framework embraced worldwide for the holistic development of children. Its primary focus is on rehabilitating delinquents and providing care for vulnerable children. Ideally, efforts are made to reintegrate children into their families whenever possible.

Aristotelian Perspective: Views childhood as a crucial developmental phase, emphasizing the responsibility of adults to create a nurturing environment for children to become well-adjusted adults.

John Locke's Perspective: Argues that the human mind starts as a blank slate, shaped by experiences rather than inherent traits. This contrasts with Plato's idea of innate knowledge.

Critique and Reflection: Reflects on how childhood experiences, such as artistic expression, can influence adult outcomes, challenging the notion that childhood achievements or failures determine adult lives.

Overall, the discussion highlights how different philosophical views on childhood shape our understanding of education, rehabilitation, and the juvenile justice system's goals.

2. DEFINITION OF A CHILD, FOCUSING ON VARIOUS LEGAL PERSPECTIVES IN INDIA

Defining the age at which a person becomes or ceases to be considered a child is a consistent topic of debate

in India. The Census of India defines children as individuals under the age of 14, as do most government initiatives. Childhood is typically viewed as the stage between infancy and adulthood. According to the UNCRC (United Nations Convention on the Rights of the Child), a child is anyone under the age of eighteen years, unless under applicable law the age of majority is attained earlier. This allows individual countries to determine their own age limits for childhood in accordance with their laws.

In India, different laws related to children define them within varying age ranges. The Indian Penal Code (IPC) of 1860 states that no child under the age of seven can be held criminally responsible (Sec 82 IPC). This age limit rises to twelve years in cases of mental incapacity or inability to understand the consequences of one's actions (Sec 83 IPC). A girl must be at least sixteen years old to give sexual consent, unless married, in which case the minimum age is fifteen. For protection against abduction, recruitment, and related offenses, the age is set at sixteen for boys and eighteen for girls.

Article 21(A) of the Indian Constitution mandates free and compulsory education for all children aged six to fourteen years. Article 45 extends this to early childhood care and education until the age of six. Article 51(A)(k) emphasizes the responsibility of parents or guardians to ensure education for children between the ages of six and fourteen.

The Child Labor (Prohibition and Regulation) Act of 1986 defines a child as someone who has not yet completed fourteen years of age. The Factories Act of 1948 and Plantation Labor Act of 1951 set the age at fifteen for children and eighteen for adolescents. Under the Factories Act, adolescents can work in factories if deemed medically fit but not for more than four and a half hours a day.

The Motor Transport Workers Act of 1961 and the Beedi and Cigar Workers (Conditions of Employment) Act of 1966 define a child as under fifteen years and fourteen years respectively. The Mines Act of 1952

defines an adult as someone who has reached eighteen years of age, thereby defining a child as under eighteen.

The Prohibition of Child Marriage Act of 2006 sets the legal age of majority at twenty-one for males and eighteen for females. The Indian Majority Act of 1875 and subsequent laws for Hindus, Muslims, Christians, and Zoroastrians maintain eighteen as the age of majority.

The Juvenile Justice Act of 1986 initially defined boys under sixteen years and girls under eighteen as juveniles. The Juvenile Justice (Care and Protection of Children) Act of 2000 expanded this definition to include anyone under eighteen years. However, the Juvenile Justice (Care and Protection of Children) Act of 2015 amended this, allowing children in conflict with the law aged 16-18 to be treated as adults for serious offenses such as rape, murder, and certain other crimes punishable by imprisonment of seven years or more.

Given its comprehensive provisions and status as the latest law regarding child rights and protection, many argue that the definition of a child under the Juvenile Justice Act of 2015 should be considered the legal standard in all matters concerning children.

The debate over the definition of "child" has resurfaced following a Supreme Court decision on January 11, 2016, urging Parliament to consider stricter sentencing for offenders of child sexual abuse. Currently, the Indian Penal Code defines a "child" as anyone under the age of 18, without distinguishing between years and different minors in cases of assault. In a notable case, the Supreme Court referred to *Lakshmi Kant Pandey v. The Union of India*, emphasizing that children are a crucial national asset, and the nation's future depends on their development. The Court linked these principles to Article 21, asserting rights to home, name, and family as integral to the "right to life". A similar issue was addressed by the Kerala High Court in *Philips Allred Malvin v. Y.J. Gonsalves*, affirming the right of couples to adopt under Article 21, encompassing elements essential to life.

The age limit for juvenile offenders accused of heinous crimes sparked significant debate when the Juvenile Justice (Care and Protection of Children) Bill, 2014 received presidential assent on December 31, 2015, and the new Act was notified on January 15, 2016. This legislation allows for the trial of certain

individuals aged 16 to 18 as adults, based on preliminary assessments of their mental and physical capacity, the circumstances of the offense, and their comprehension of its consequences.

Public and parliamentary discussions mainly focused on juveniles involved in homicides, murders, rapes, and sexual crimes. However, deeper concerns revolve around why children become involved in such crimes and the societal gaps that fail to protect them from abuse and exploitation, particularly those recruited into armed groups in regions like Naxal areas.

During the Eastern Region Round Table Conference on the Effective Implementation of the JJ Act in 2015, concerns were raised about the impact of insurgency on children in Chhattisgarh and Jharkhand. This highlighted the state's responsibilities towards these children, as armed groups continue to recruit those aged 16 to 18 who can now be tried as adults under the new law, despite their vulnerability and exploitation starting much earlier.

Reports have detailed the recruitment and training of children as young as 6 years old by armed groups in states like Bihar, Chhattisgarh, Jharkhand, and Odisha, involving them in violent activities and threatening their families if they attempt to escape.

The new law broadly defines "heinous offenses" to include crimes punishable by imprisonment for seven years or more under the Indian Penal Code or other current laws. This encompasses offenses like trafficking, acid attacks, and armed robberies.

Critics argue that treating youths aged 16 to 18 as adults fails to consider their cognitive development, vulnerability in coercive situations, lack of foresight, and susceptibility to external influences. The JJ Act, 2015 also criminalizes the use of children by non-state or terrorist groups for illegal activities, including drug trafficking.

A study commissioned by the National Commission for Protection of Child Rights and conducted by the National Drug Dependence Treatment Center (NDDTC) and All India Institute of Medical Sciences (AIIMS) highlighted widespread substance abuse among children in India, often influenced by family and peer pressures.

The study revealed alarming rates of risky behavior among children, including engagement in sexual activities under the influence of substances, often in exchange for drugs or money. Many children involved

in such activities did not seek help, highlighting significant gaps in support systems.

These discussions underscore the complexities in dealing with children caught in cycles of addiction and committing serious offenses, and raise ethical questions about how society should respond to juvenile offenders influenced by adults to commit violent acts to prove their maturity.

While there is nothing child-like about assault or any form of brutality, assessing a 'child-like or adult-like mentality' in this context is equally misguided. The real question is whether we can hold youths, whose brains are still developing and lack the neurological brakes to prevent impulsive actions in highly charged situations, equally accountable. Their inflicted injuries may be similar, but their culpability is not.

With the passage of the Juvenile Justice Act, 2015, Parliament has arguably stripped youths of the protections they need during a transient and tumultuous phase of their lives. Instead of strengthening accountability mechanisms within the juvenile justice system and intensifying preventive efforts, the focus has shifted towards punitive measures, prioritizing retaliation over education, medical treatment, protection, and rehabilitation. [22]

III. CHILD RIGHTS AND CHILD PROTECTIONS

What are Child Rights?

Rights are fundamental or contractual agreements between those who hold them (rights-holders) and those or institutions that then have responsibilities and obligations in ensuring those rights (duty-bearers). Child rights are specific human rights applicable to all individuals under the age of 18.

Child rights are primarily defined by the United Nations Convention on the Rights of the Child (UNCRC). According to the UNCRC, child rights are inherent entitlements and opportunities that should be available to all individuals under 18, regardless of race, color, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status.

The UNCRC aims to outline the fundamental human rights that should be guaranteed to children. These rights can be broadly categorized into four groups, encompassing all aspects of a child's life: social, political, economic, cultural, and civil.

1. Right to Survival: This encompasses a child's right to life from conception, including access to basic nutrition, shelter, clothing, and a dignified standard of living.

2. Right to Protection: Children have the right to be safeguarded from neglect, abuse, and exploitation both at home and elsewhere.

3. Right to Participation: Children have the right to participate in decisions that affect them directly or indirectly, with varying degrees of involvement based on their age and maturity.

4. Right to Development: Children have the right to all forms of development—emotional, mental, and physical. Emotional development is fostered through nurturing care and a supportive community, mental development through education and learning, and physical development through play, recreation, and nutrition.

What is Child Protection?

UNICEF defines child protection as the prevention of, and response to, abuse, exploitation, violence, and neglect of children. This includes commercial sexual exploitation, trafficking, child labor, harmful traditional practices such as female genital mutilation/cutting, and child marriage. Protection also ensures that children have access to their rights to survival, development, participation, and protection.

When child protection fails or is absent, children are at higher risk of mortality, poor physical and mental health, HIV/AIDS infection, educational challenges, displacement, homelessness, and inadequate parenting skills later in life.

According to the Integrated Child Protection Scheme (ICPS), child protection aims to ensure children are safe from threats or perceived risks to their lives or well-being. It identifies vulnerable children and reduces their risks by shielding them from harm and dangerous situations. Child protection ensures children have a safety net, and if they do slip through the cracks of the system, it is responsible for providing them with necessary care and rehabilitation to reintegrate them into a secure environment. [23]

Concept of Children's Rights:

It is crucial to distinguish between two concepts. Children's rights are a set of principles or frameworks. They are enforceable and some are actionable in a formal legal context, but they are not unmistakable:

Security is indeed one of these rights. However, Child Protection extends beyond a mere entitlement. It is a framework through which a child's rights can be realized. This framework involves specific duty-bearers such as government departments, police, schools, civil society, all of whom have roles to play in ensuring that children's rights are upheld, and in cases where rights are violated, that the violator is held accountable. Child protection involves both treatment and prevention. Risk management is crucial to minimize the risk of child rights violations in any given environment or context.

Child protection is thus the means through which every other right of a child can be safeguarded. For instance, a child has the right to grow up in a nurturing family environment. The child protection framework first ensures that families can sustain themselves by providing them with health care, training, and livelihood opportunities at minimal cost. The next step is to address the needs of children who have fallen through societal cracks, such as those who are impoverished, abandoned, or orphaned. This system includes mechanisms to place these children in supportive family environments through adoption, foster care, or other forms of childcare, ensuring access to health and education services. Therefore, the system is not a single entity or governmental body but a network of interconnected systems and stakeholders.

IV. CONCLUSION

Children constitute the nation's invaluable human resources. The future success of a nation hinges on the development and achievements of its children. As the great poet Milton once said, "Youth shows the man as morning shows the day." Therefore, it is the responsibility of society to nurture every child with the aim of ensuring their full development. Children are the future leaders and torchbearers of society; they embody our knowledge, cultural heritage, beliefs, and philosophies. They are potential educators, doctors, judges, leaders, administrators, engineers, and politicians upon whom the entire fabric of society rests. Sadly, many children are deprived of their childhood and right to education, making them vulnerable to exploitation, abuse, and neglect.

Child labor is a complex socio-economic issue. In a country where a significant number of children go to bed hungry without having had a single proper meal, the complete eradication of child labor through

legislative measures alone cannot be considered a viable solution. It may alleviate the distress but cannot cure it. As Samuel Johnson aptly put it, "Poverty is a great enemy to human happiness; it certainly destroys liberty, and it makes some virtues impracticable and others extremely difficult."

V. SUGGESTIONS

The Government of India, in addition to prioritizing child rights in various legislations, can also consider the following measures for the welfare of children:

- Skill Enhancement Programs: Bridge the gap between childhood and adulthood by providing platforms for children to enhance their skills for better employability in the future. Schools should offer vocational training alongside basic education, making it beneficial for children from disadvantaged backgrounds.

- Welfare Programs: Programs like the Kishori Shakti Yojana (Program for girls) and Rajiv Gandhi Scheme for Empowerment of Adolescent Girls have been initiated to empower girls in vocational, life, and nutritional skills. Increasing enrollment in these programs can deter children from entering the workforce prematurely.

- Professional Education: Initiate vocational education for adolescents after their compulsory schooling. Utilize existing government platforms such as rural and urban schools to provide professional training.

- Expansion of Child Protection Services: The Government's Integrated Child Protection Services Scheme should be expanded with the involvement of local governments to professionally train adolescents and discourage their engagement in labor. Addressing the issue of child labor requires a comprehensive approach.

The Government has already initiated several national-level schemes such as the National Rural Employment Guarantee Scheme, Food Security Scheme, National Rural Health Mission, Integrated Child Development Services Scheme, Integrated Child Protection Services Scheme, among others, to tackle these challenges effectively.

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