

Child Protection in India: Issues and Policies

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Abstract

The current statistics of crimes against children and violation of child rights in India reflects poorly on the vulnerabilities of children. In India, the increasing trend of crimes especially against children exhibits the highest level of bestiality in the commission of a crime. Therefore, the protection of children from abuse is considered a priority by the world. Also, various initiatives were taken by the Indian Government to lower this increasing crime rate. This paper attempts to analyze and highlight some major legislative initiatives by the Indian Government for the protection of children. The paper discusses the Juvenile Justice (Care and Protection) Act, 2015, POCSO Act 2012, and CHILDLINE. Besides having the progressive legislation of child protection in India the key approach should be to educate, inform, and empower the families and communities about the existence of these services. Awareness of the legislations and information about the governmental assistance would ensure proper utilization of such schemes. While understanding that implementation of services is not enough, we argue that every member of the society through improved sensitization regarding the child protection policies have the potential to help in the reduction of child abuse.

Keywords: Protection Policies, Legislations, Juvenile Justice Act, POCSO Act, Child Abuse

Introduction

India, being the largest democracy in the world is also home to the largest population of children in the world. Children constitute more than 400 million of the one billion plus population of India (UNICEF, 2011). According to the provisional Census 2011 figures, India with a population of 121.1 Cr has 37.24 Cr in the tender age bracket of birth-14 years which constitutes 30.76% of the total population.

Children and childhood through the whole world, have broadly been construed in terms of a 'golden age' that is synonymous with innocence, freedom, joy, play and the like. But, then, it is also true that children are among the most vulnerable and innocent victims of crimes (Bhakhry, 2006). Unfortunately, it is common to see children in vulnerable and difficult circumstances at an age where they should be in school and learning (Giusti&Kulkarni, 2012). According to the Ministry of Women and Child Development (MWCD), around 170 million or 40 percent of all children in India are either vulnerable to or experiencing difficult circumstances, such as violence at home, separation from family and street life.

It is often seen that corporal punishment in schools both government as well as private is deeply ingrained as a tool to discipline children. Children face particular discrimination and exclusion against which they have a right to full protection. The low status of children in our society also means that they are more vulnerable to sexual abuse and other forms of violence (Ajithkumar, 2009).

Juvenile delinquency has also become a cause of concern in India with the release of Crime in India Report (2014) which shows that from 2003 to 2014 crimes committed by children have increased from 1% to 1.2%. In fact, children of the age group 16-18 years were responsible for 66% of crimes committed by all children in 2013 reflecting an increase of ten percent points from 2003 records (Crimes in India, 2014).

Indian Paradigm in seeing the increasing trend of sexual crimes specifically against children exhibiting highest level of bestiality and barbarity in commission of crime, disrepute of the sexual offender behaving with impunity, there have been series of deliberations and outrage across the country related to crime against children. Child sexual abuse still remains a taboo in the country but it's a real problem. The definition of child sexual abuse varies from country to country. Although India places high premium on chastity of women, yet it has the largest number of child sex workers in the world (Kumar *et al* 2012). Thus, the protection of children demands utmost importance in every civilized society to ensure healthy and happy nation of tomorrow. In this backdrop, the current paper is written to describe some important and specific government initiatives which have been introduced to protect children from crimes.

Child protection means to provide the child a safe and secure environment which will allow children an easy access to their basic rights. It also aims at understanding that children are vulnerable, recognizing their susceptibilities and henceforth reducing the recognized vulnerabilities by protecting them from harmful situations and avoiding the harm. In case children fall through any inadequacies of the system child protection also ensures a safety network to lean on and compensate for that loss and provide the necessary care and rehabilitation facilities to bring such children back into the safety net again. Protecting children from all forms of violence, abuse, and exploitation is essential for the holistic development of children, as it enables them to become active participants in their own development and the development of the Nation.

Earlier, little attention was given towards the specific rights and protection of children but with the advent of this century, the issue of child protection has become the focus of Government. The twenty-first century has heralded a number of important policy and legislative initiatives to ensure child protection. Throughout these years, ample provisions have been made for the protection, development and welfare of children within the framework of the Indian Constitution.

India is also signatory to the United Nations Convention on the Rights of the Child (UNCRC) and accordingly has a strong legal framework to protect children which include the

Juvenile Justice (Care and Protection of Children) Act 2015, the Protection of Children from Sexual Offences (POCSO) Act 2012, Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act 1994, the Commission for Protection of Child Rights Act 2005; the Right of Children to Free and Compulsory Education Act, 2009; Prohibition of Child Marriage Act, 2006; and Child Labour (Prohibition and Regulation) Amendment Act, 2016 (National Child Protection Policy India). This paper discusses and looks into the provisions of the Juvenile Justice Act, POCSO Act and CHILDLINE.

The Juvenile Justice (Care and Protection of Children) Act 2015

The Juvenile Justice (Care and Protection of Children) Act came into existence on 15 January, 2016 an initiative to provide an all-inclusive legal framework to look after those children who are not only in conflict with law but also in need of care and protection. This is an Act to consolidate and amend the law relating to children who are in conflict with law and who are in need of care and protection. According to the law, 'child in conflict with law' means a child who is alleged or found to have committed an offence and has not completed eighteen years of age on the date of commission of such offence. Further, a child in need of care and protection means a child who is vulnerable due to social, economic, or cultural disadvantages, such as those children found without any home or settled place of abode and without any ostensible means of subsistence.

The Act works for protection of children by catering to their basic needs through proper care, protection, treatment, social re-integration, by also by adopting a child-friendly approach in the judgment and disposal of matters in the best interest of children. The Act also works for rehabilitation of children through processes provided by the law. The Act places its reliance on following principles which have also been enumerated in Act itself- principle of presumption of innocence, principle of participation, principle of dignity and worth, principle of best principle of family responsibility, positive measures, principle of safety, principle of non-stigmatizing semantics, principle of equality and non-discrimination, principle of privacy and confidentiality and principle of natural justice. Some key provisions under the JJ Act include: across the Act to remove the negative connotation associated with the word 'Juvenile', inclusion of several new definitions such as orphaned, abandoned and surrendered children' and petty, serious and heinous offences committed by children clarity in powers, function and responsibilities of juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year; separate new chapter on "adoption" to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions.

CHILDLINE-

CHILDLINE is India's first 24-hour, toll free, emergency phone outreach service for children in India. Any child or concerned adult can dial 1098 to access this service. Along with 24x7 child helpline it also provides for an online portal to track the missing children. Child

line can be approached by dialing “1098” to report any child abuse and look for assistance. The nodal organization for the service is CHILDLINE India Foundation (CIF). CIF was founded in 1999 with the goal to reach out to marginalized children in need of care and protection (CIF 2011). The Act includes the following categories of children:

- Children who have been abuse
- Street children and youth living alone on the streets
- Child laborers specifically working in the unorganized sectors
- Mentally challenged children
- Child political refugees
- Children whose families are in crisis
- HIV/ AIDS affected children
- Children affected by conflict or disaster
- Child victims of the flesh trade
- Differently-abled children
- Children in institutions
- Children who are emotionally disturbed
- Child addicts, children in conflict with law

The Government of India (GOI) is the main body responsible for the implementation of CHILDLINE helpline across the country. In 11th 5-year plan of the Government of India has mandated that the CHILDLINE service be available in each one of India’s 600+ districts. In order to meet that mandate, the Ministry of Women and Child Development (MWCD), GOI supports CIF under its Integrated Child Protection Scheme. The ministry facilitates networking with all other government ministries. It provides the core funding for the CHILDLINE service across country and uses data generated by CHILDLINE in policy and legislation formulation.

The Protection of Children from Sexual Offences POCSO Act 2012

In order to successfully address the heinous crimes of sexual abuse and sexual exploitation of children through less ambiguous and more stringent legal provisions, the Ministry of Women and Child Development championed the introduction of the “Protection of Children from Sexual Offences (POCSO) Act, 2012”. In November 2012, the Government of India passed The Protection of Children from Sexual Offences Act (POCSO) meant to protect children from the offences of sexual assault and also, safeguarding the interest and well-being of children. The Protection of Children from Sexual Offences (POCSO) Act, 2012 (that regards any sexual activity with a child below 18 years a crime), describes various forms of sexual offences [POCSO 2012]. The act clearly describes various forms of sexual misconducts including actual or an attempt of sexual intercourse, oral sex, touching sexual parts, pornography and inappropriately photographing of a child less than 18 years of age. This act identifies six types of sexual offences and prescribes appropriate punishment for the same:

1. Penetrative Sexual Assault (Sec.3)
2. Aggravated Penetrative Sexual Assault (Sec.5)
3. Sexual Assault (Sec. 7)
4. Aggravated Sexual Assault (Sec 9)
5. Sexual Harassment (Sec. 11)
6. Using Child for Pornographic Purposes (Sec. 13)

The POCSO is a comprehensive law, which further expand the scope and different forms of Child Sexual Abuse, makes its reporting obligatory. The Act calls for mandatory reporting to ensure that the doctor or other health professional that has the knowledge of sexual offence against any child is obliged to report the offence. Under this act, physicians are made responsible for ensuring prompt and adequate response to child victims. Further, if someone fails to report, he may face legal punishment (6 months imprisonment and/or fine (Sections 19 and 21 of the POCSO Act) prescribed under the act (Seth &Srivastava, 2017). The mandatory reporting does not say that the reporter has a compulsion to inform the child or his parents or guardian about his duty to report. While making the mandatory report, the doctor or any other health professional should describe the nature of the abuse and entirely involved parties. The reporter is not expected to investigate the matter, or even know the identity of the offender, which are left to the police and other investigation agencies.

The act operates with the intention to watch the best interest of the child during every stage of the judicial process. All this is ensured through the adoption of a child-friendly method for reporting, documenting of evidence, and investigation along with the speedy trial of offenses through designated special courts.

Although, the Act envisages a multidisciplinary approach that will be conducive to justice delivery for a sexually abused child but this can only be achieved through convergence and coordination between all key stakeholders such as Child Welfare Committees, Juvenile Police Units, District Child Protection Units, health professionals, mental health professionals including psychologist, psychiatrist and counselors, child developmental experts, medical social workers, advocates and members of legal profession (Seth &Srivastava, 2017).

A forensic study conducted on Child Sexual Abuse (CSA) by Kulkarni *et al* (2015) highlighted an imperative need for awareness among common people and parent, that they have their rights and they can exercise them and lay man can approach the police without any fear. Also there is a need for conducting an efficient training session for children and teacher. It was also said that the child line should be displayed in the institute and hospitals for reporting any case of known or suspected child abuse.

Conclusion

The widespread failure to protect children is a global crisis and represents a major violation of children's rights, which impacts on the current well-being of children. In addition to impacting on the well-being of children, the inadequate care and protection of children is also affecting the achievement of child protection. Many girls and boys die each year because they are abused, neglected or exploited. As children are nation's supreme asset the nation has taken

various initiatives to protect its asset. The Government of India has launched a wide array of legislations that addresses violated rights of children. The JJ Act, CHILDLINE and the POCSO Act are some of the major child protection policies. While officials and government can only institute policies, ignoring everyday child abuse and exploitation must also be attacked at an individual level. The increasing vulnerability of children represents an unacceptable situation, which must be remedied urgently. Therefore, we must all strive for a safer world where children can be free from violence, abuse, neglect and exploitation. Children's programmes should find a prominent part in national plans for creating awareness of the current legislations to prevent child abuse so that children grow up to become healthy citizens endowed with the skills and motivation needed by the society. The lack of knowledge among people regarding the guidelines to manage child abuse in most emergency settings, hospitals and healthcare facilities looking after children has created a huge gap in the delivery of child protection service. This trend can be reversed with education of the public on forms of violence and the rights of children as long as governments, along with its health sectors, social services and justice systems wake up to this serious problem, not only to children, but of course to its future adults as well. It is further required that wherever possible provide care and support this cause.

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