

Offences Against Children And Protection Of Their Rights

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Abstract:-

AS **harry Blackmun said**, when he wrote *Roe V.Wade*, ‘Once a child is born, the child has basic constitutional rights; due process, equal protection of the laws’.

In a criminal society, the importance of child welfare cannot be underestimated , the welfare of the entire community , its growth and development depends upon the health and well-being of its children .

Children are the supremely important national asset”, and the future well-being depends upon how children grow and develop child rights are fundamental freedom and the inherit rights of all human beings below the age of 18 years. In India , the post independence Era has experienced and unequivocal expressions of the commitment of the government to cause of children through constitutional provisions, policies, programmes, and legislations. There has been great concern for the welfare of children at the International and national levels. Kofy Annan, secretary general of United Nation observed;

There is no trust more sacred than the one of the world holds the children there is no duty more important than ensuring that their rights are respected that, their welfare is protected, that there lives are free from fear and want and that they grow up in piece. There is no specific and separate classification of Offences against children. Generally, the offences committed against them or the crimes in which children are victims are categorised as crimes against children Indian Penal Code, 1860 has prescribed various penal provisions for different kinds of offences. The Code deals with some offences which are being committed against children, these offences are:-

- 1)- Abetment of Suicide
- 2)- Exposure and Abandonment
- 3)- Unnatural Offences

4)- Kidnapping and Abduction.

In Practical Sense, the extent of child prostitution , child pornography and immoral trafficking of child has become a matter of serious concern in India. Trafficking in human beings for the flesh trade has emerged as one of the most profitable trades in world today. In spite of various provisions in Indian Penal Code 1860, to protect the children and various verdicts of the judiciary , still such offences against children are increasing under Indian society. To conclude , it can be said that, children are always innocent and some people try to exploit them and deprive them of their basic human rights.

keywords- Unequivocal , Exposure, Kidnapping , Abduction , Abetment.

INTRODUCTION:-

Children constitute nearly 40 percent of the country's population and have been declared as national assets¹. They are innocent and helpless guys and therefore need proper care, protection and nourishment so that they become useful members of the society . The future of a nation depends on the welfare and well-being of its children. State is obliged to provide them all basic human rights and protect them from all sorts of exploitation. ²In national and international levels various enactments , conventions, recommendations, declarations, policies etc. are there for the welfare of the children. Judiciary has also been playing pivotal role to protect the children. Still, for centuries, children have been neglected, abused and exploited to a great extent and they are being victims of various offences. There is no specific and separate classification of offences as offences committed against them or the crimes in which children were victims are categorised as crimes against children.

On the other hand , the changing social attitudes towards criminality by children has been a matter of concern for which a child friendly juvenile justice system has been provided . Right now is the time his bones are being formed, his blood is being made and his sense being developed. To him we cannot answer tomorrow, his name is today. If tomorrow , his name is today. If children are better equipped with a broader and human outlook the whole world will feel happy with them. Therefore status of a child in a society is very important. In the post world

¹ <https://www.savethechildren.in>

² <https://www.loc.gov/law/help/child-rights/International-law.php>

war period , when the concept of human rights arose, some attention was given to improve the status of the children. Provisions, policies and child related programmes as a part of the social justice directed towards this vulnerable group started to pour in and welfare measures were planned for them in both national and international level on urgent basis. In due course of time a number of legislative measures, plans and policies have been enacted and undertaken to uplift the status of children in India. In this regard , justice Subba Rao has rightly remarked, " Social justice must begin with children. Unless tender plant is properly tendered and nourished, it has little chance of growing into a strong and useful tree. So, first priority in the scale of social justice shall be given to the welfare of children . In a civilised society, the welfare of the child is considered to be paramount and the state can never overlook the most valuable asset of the nation- THE CHILD. Every necessary step is to be taken by the state for the proper growth and development of children .³

"VARIOUS OFFENCES AGAINST CHILDREN"

There is no separate and specific classification of offences as offences against children. Generally the offences committed against them or the crimes in which children were victim are categorised as crimes against children. Offences against children and juvenile offence has become an independent subject of study. Some of the crimes committed against children are as follows child trafficking.

Trafficking in human beings, more so in women and children , for the flesh trade has emerged as one of the most profitable trades in the world today. It is one of the fastest growing forms of criminal activity run by the criminal syndicate , next only to drugs and weapons trade. Each year, an estimated seven million people, mostly women and children (girls) are trafficked throughout the world and more than one million children are trafficked into local and international sex industries . The commercial sexual exploitation of children is a very serious violation of children's rights, which implies not only that the child is sexually abused by the adult, but also that there may be recommendation in cash or kind and thus , the child is treated as a sexual object as well as a commercial commodity .

³ Dr. S. K. Chatterjee; "Offences against children and juvenile offence"; Central Law Publications.

There are mainly three factors which are responsible for the existence of the problem of trafficking in India. these are:-

- 1- Demand factors,
- 2- Supply factors; and
- 3- Expectation factors.

The Traffickers use various techniques and strategies to collect young girls / children and women. The main thing they look for are physical beauty and young age, so that they can be easily victimised into sexual slavery for profit. Child pornography, which is the audio-visual material using children in a sexual context is another form of commercial sexual exploitation of the trafficked children and is in great demand. The two main ways in which children may potentially be harmed by child pornography are being exposed to pornography and by being filmed or photographed or made the subjects themselves in some other way. Immoral Trafficking has become a matter of tremendous concern in the present days due to the gross violation of human rights, particularly of women and minor girls. The word 'kidnapping' has been derived from the word 'kid' meaning 'child' and 'napping' to steal. Thus , the term 'kidnapping' literally means child stealing and the word kidnapper originally (during 17th century) meant to signify one who stole children and others to provide servants labourers for the American plantations . According to sections 359 of Indian Penal Code⁴, kidnapping is of two types:-

- (a)- Kidnapping from India; and
- (b)- Kidnapping from lawful guardianship,

which are defined in sections 360 and 361 respectively and both of them are made punishable alike by section 363 of the said code.

(a)- Whoever conveys any person beyond the limits of India without the consent on behalf of that person , or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from India . Section 360 says that the conveying of any person must be without the consent of that person.

⁴ Section 359 Indian Penal code.

(b)- Section 361⁵ of Indian Penal Code provides that, "whoever takes or entices any minor under the age of sixteen years if a male , or under the age of eighteen years , if a female , or any person of unsound mind , out of the keeping of the lawful guardian of such minor or person of unsound mind , without the consent of such guardian , is said to kidnap such minor or person from lawful guardianship. The distinction between two forms of kidnapping are as concerned a person of any age can be kidnapped from India . In this the consent of the person kidnapped or the person who is legally authorised to give consent is very much essential. This is a continuing offence and can also be abetted . Secondly, in case of kidnapping from lawful guardianship, only a minor and a person of unsound mind can be kidnapped, where consent of the person kidnapped is immaterial , and it is not a continuing offence and cannot be abetted. Whoever by force compels , or by any deceitful means induces any person to go from any place, is said to abduct that person, under section 362 of Indian Penal Code. Thus two essential ingredients of the offence of abduction are, forceful compulsion or inducement by deceitful means and object of such compulsion or inducement must be the going of a person from any place. However , it s an auxiliary act not punishable in itself, but when it is accompanied by a certain intention to commit another offence, it per se becomes punishable as an offence. But when no force or deceit is practiced on the person abducted , there can be no offence of abduction . Thus , simply speaking , abduction may take place against a person of any age and like kidnapping ,removal of a person from lawful guardianship is not necessary . The global campaign for elimination of violence against children in recent years indicates the enormity as well as the seriousness of the atrocities committed against them . Most of the child rapes committed in India are of the second category , because majority of the rapists as well as victims come from socio- economically depressed segments of society living in slums and in most of the cases culprits are known to the children . The victims of child rape also include girls below sixteen years of age who have been raped by their fathers.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES:-

Sexual behaviour is simply a biological phenomenon . The bio-physical changes with the growth of human body automatically prepare the males and females for sex behaviour and thus, it needs no specific training . Sex crimes have nowadays become so common that not only adults , but the

⁵ Section 361 Indian Penal code.

tender aged children also are becoming the victims of various sexual offences .⁶ In such cases , responsibilities on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Children always need special care and protection . Their physical and mental immobility call for such protection . It has always been stated that children are the natural resource of the country. They are country's future , a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse.

To strengthen the legal provisions for the protection of children from sexual abuse and exploitation , a special law has been passed which intends to address the issue of sexual offences against children. Though sexual offences are currently covered under different sections of Indian Penal Code, 1860, It does not provide for all types of sexual offences against children and, more important , does not distinguish between adult and child victims . Therefore , the protection of children from Sexual offences Act, 2012 was enacted which came into force from 19th June 2012 with a view to protect the children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

NATIONAL AND INTERNATIONAL POLICIES MADE FOR THE CHILDREN

There are some national and international policies made for the children:-

NATIONAL POLICIES:-

(1)- National policy for children, 1974-

The National Policy for Children , 1974 is the first policy document concerning the needs and rights of the children . it recognizes the children to be a supremely important national asset . The goal of the policy is to take the next step in ensuring the constitutional provisions for children and the United Nation's Declaration of the Rights of Child are implemented properly. " the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility . Equal opportunities for development to all children during the period of growth

⁶ www.prsindia.org

should be our aim , for this would serve our larger purpose of reducing inequality and bring social justice".⁷

(2)- National Policy for children, 2013-

On April 18th, 2013 the Union Cabinet approved the National Policy for Children to help in the implementation of programmes and schemes for children all over the country. The policy gives utmost priority to right to life, health and nutrition and also gives importance to development , education, protection and participation.

Preamble:-

The National Policy for Children, 2013 in its Preamble, recognises that:

- (a)- A child means an person below the age of eighteen years.
- (b)- Childhood is an integral part of life with a value of its own.
- (c)- A long term , sustainable multi-sectorial, integrated and inclusive approach is necessary for the overall and harmonious development and protection of children.⁸

Necessary Measures to be taken :-

Regarding survival , health and nutrition- this policy categorically said and emphasized that," The right to life , survival, health and nutrition is an inalienable right of every child and will receive the highest priority . Every child has a right to adequate nutrition and to be safeguarded against hunger , deprivation and malnutrition.

Regarding education and development- Every child has equal right to learning , knowledge and education . The State recognises its responsibility to secure this right for every child , with due regard for special needs, through access, provision and promotion of required environment, information , infrastructure , services and supports , towards the development of the child's fullest potential.

⁷ www.forces.org.in

⁸ www.cry.org

(3)- National Health Policy, 2002-

In 1983 the government of India came out with a National Health Policy to govern the functioning of the public health sector . Some of the achievements of 1983 policy were positive changes in the incidence of diseases like polio, malaria and leprosy, and decreases in the crude birth rate , crude death rate and also infant mortality rate . But this policy does not address certain newer issues in health such as HIV/AIDS or lifestyle diseases such as diabetes, cancer and cardiovascular diseases .⁹

The new policy begins with an outline of the health sector scenario in 2002. In an attempt to address inequalities of access to health services, the National Health Policy , 2002 proposes an increase in primary health expenditure in order to open more outlets. The 2002 policy also encourages the government to further decentralize their services, to set norms as per the provisions of the Indian Medical Council Act and Indian Nursing Council Act , to set up more Medical education institutes, to update medical curriculum, and increase specialised professional in family health sector.

(4)National Charter For Children, 2003-

The National Charter for Children , 2003 is a re-commitment document. It categorically intended to secure for every child the right to a healthy and happy childhood; to address the root causes that negate the healthy growth and development of children; and to awaken the conscience of the community in the wider social context to protect children from all forms of abuse while strengthening the family, society and the nation . It is a brief re-cap of issues children face and the duty the state has towards these children.

It gives emphasis on the requirement of every child to protection from abandonment and neglect , and the duty to assure minimum needs and security of children. This Charter also commits to the need for all children to get free primary education, early childhood care, play and leisure, physical exercise, cognitive development, etc. It categorically intends that children should be protected from economic exploitation and against various other forms of abuse , and thus it is a request to ban of all forms of child labour¹⁰.

⁹ www.nhm.gov.in

¹⁰ www.jeywin.com

CHILD PROTECTION-

The Plan of Action, 2005 categorizes children into six main groups: children in difficult circumstances , children in conflict with law , sexual exploitation and child pornography , child trafficking , combating child labour and children affected by HIV/AIDS.

INTERNATIONAL POLICIES:-

(1)- Convention on the rights of the child 1989 (CRC- 1989) :-

The Convention on the Rights of the child was adopted by the General Assembly of the United Nations on 20th November, 1989, after three decades of the 1959 'Declaration on the Rights of the Child' in order to meet the special needs of children emerging out of new legal responses. This Convention was guided by the fundamental principle ' first call for children ' i.e. " essential needs of the children should be given highest priority in the allocation of resources at all times," It provides clear goals and possible strategies for action. The Convention has 54 Articles in total. Articles 1 to 42 are concerned with the right to survival, right to protection, right to development , right to participation, and overall welfare of the children. ¹¹

(2)- Declaration of the rights of the child, 1924(DRC- 1924):-

The first international instrument dealing with the rights of the child was adopted by the League of Nations on 26th September, 1924 in the name of 'Declaration of the Rights of the Child' , 1924. This Declaration says that- "By the present Declaration of the Rights of the Child, commonly known as 'Declaration of Geneva', men and women of all nations , recognizing that mankind owes to the child the best that it has to give , declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

(a)- The child must be given the means requisite for its normal development , both materially and spiritually;

(b)- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;

¹¹ www.ohchr.org

- (c)- The child must be the first to receive relief in times of distress;
- (d)- The child must be put in a position to earn a livelihood , and must be protected against every form of exploitation;
- (e)- The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men".¹²

At the International level a great concern has been raised for the welfare of the child. Starting from declaration of the Rights of the child , 1924 till date, each and every document has specific provisions for the protection and welfare of children.

CONCLUSION:-

The tireless efforts of the NGO's and the policies as mentioned above are working effortlessly for the protection of children pushed into child labour, child trafficking, children facing abuse in community, children affected by calamity or emergency situations. They play an active role to rescue these children from various kinds of harms, neglect, abuse, exploitation, physical danger and violence and work to ensure happy and safe childhood for all children. Civil society organisation, child-led initiatives, governments, and other key stakeholders work together with them to achieve these goals for the children for a better childhood. Lastly, all children deserve a happy childhood and a opportunity to lead a safe and dignified life and protection from violence, exploitation, neglect and discrimination. In India, the child population is more than 472 million and these children are the asset of the young India.

¹² www.humanium.org