



An Analytical Study about the Crime against Children

Dr. Sandeep Lal

Co-Ordinator, School of Law, BLSITM Bahadurgarh (Haryana)

Children, who by definition require the guardianship and care of adults, are among the most vulnerable and innocent victims of crimes. Crimes against children include physical and emotional abuse; neglect; and exploitation, such as through child pornography or sex trafficking of minors. Child-related crimes often are perpetrated by parents, relatives, caretakers, and others who are charged with their care and guidance. School officials, physicians, police officers, and other such authority figures are required to report any signs of abuse or exploitation against a child. The following articles cover child abuse, statutory rape, child pornography, sexy, and other crimes against children.

Child Abuse: Definition

Child abuse is broadly defined in many states as any type of cruelty inflicted upon a child, including mental abuse, physical harm, neglect, and sexual abuse or exploitation. The specific crimes charged in instances of child abuse can include assault and battery. In many states, certain individuals and caregivers are required by law to report suspected child abuse. Nevertheless, unfortunately, many cases of child abuse go unreported.

A child who has been abused or neglected may experience a range of problems, such as relationship difficulties, lack of trust of adults, emotional outbursts (or retreat), low performance at school, depression, anxiety, and anger. Recently SC said that there is also a stipulation that sexual exploitation and sexual abuse of child are heinous offences. (Ms Eera through Dr Manjula...vs state(govt of nct of delhi) on july 2017.

The Elements of a Child Abuse Charge

As noted above, child abuse is a crime that encompasses a variety of behaviors involving physical, emotional, or sexual mistreatment or neglect upon a child. State child abuse laws define child abuse as any act (or failure to act) that: Results in imminent risk or serious harm to a child's health and welfare due to physical, emotional, or sexual abuse; affects a child (typically under the age of 18); by a parent or caregiver who is responsible for the child's welfare.

In most states, the harm must have been inflicted by non-accidental means. This includes intentional acts, actions that were careless (such as, allowing a known sexual offender or known abuser to be with a child alone), and acts of negligence (such as, leaving a child under a certain age at home alone). Also, the "harm" inflicted upon a child need not be actual, but may include "threats" or "risks of imminent harm".

In addition to state child abuse laws, all states have child protective services (CPS) agencies that investigate reports of abuse and neglect of children in a home. CPS also serves to place children who have been abused or neglected in safer homes, either through adoption or foster care.

Typical defenses include accident, wrongful accusations, and a parent's right to discipline.

Mandatory Reporting Laws

Every state has mandatory reporting laws that require certain people to report apparent or suspected child abuse to a central authority, such as via a statewide toll-free hotline. The reports -- which are often anonymous -- are meant to promote early intervention of child abuse.

Many states require "any person" to report suspected child abuse, whereas other states require mandatory reporting by certain professional, such as doctors, nurses, social workers, school officials, day care workers, and law enforcement personnel. In some states, failing to report instances of child abuse is considered a misdemeanor punishable by fines, jail time, or both.

Examples of warning signs of abuse of a child may include:

Physical abuse - unexplained burns, bites, bruises, and broken bones or parent's philosophy of harsh physical discipline

Emotional abuse - extreme behavior, delayed physical or emotional development, attempted suicide, and belittling by a parent or caregiver

Sexual abuse - difficulty walking or sitting, reports of nightmares or bedwetting, sudden changes in appetite, sudden refusal to change in front of others or participate in gym activities

Neglect - frequent absences from school, obvious lack of medical or dental care, severe body odor, stays home alone

Child Abandonment

Child abandonment occurs when a parent, guardian, or person in charge of a child either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for a child living under their roof.

While child abandonment typically involves physical abandonment -- such as leaving a child at a stranger's doorstep when no one is home -- it may also include extreme cases of emotional abandonment -- such as when a "work-a-holic" parent offers little or no physical contact or emotional support over long periods of time.

Unfortunately, abandoned children (also called "foundlings") who do not get their needs met often grow up with low self-esteem, emotional dependency, helplessness, and other issues.

A person charged with child abandonment may face felony or misdemeanor penalties and other consequences.

What Constitutes Child Abandonment?

The term "child abandonment" is broadly categorized and used to describe a variety of behaviors. Specific examples of child abandonment vary, but common actions that may lead to child abandonment charges may include:

Leaving a child with another person without provision for the child's support and without meaningful communication with the child for a period of three months;

Making only minimal efforts to support and communicate with a child

Failing for a period of at least six months to maintain regular visitation with a child;

Failed to participate in a suitable plan or program designed to reunite the parent or guardian with a child;

Leaving an infant on a doorstep, in trash cans and dumpsters, and on the side of the road

Being absent from the home for a period of time that created a substantial risk of serious harm to a child left in the home

Failing to respond to notice of child protective proceedings; or

Being unwilling to provide care, support, or supervision for the child

Child Abandonment Laws

Child abandonment laws vary from state to state. Many states include child abandonment within its child abuse laws and vice versa, while some states have laws specifically targeting the act of child abandonment.

Most states classify child abandonment as a felony, which may include situations where a parent or guardian physically abandons a child in any place with the intent of relinquishing all rights and responsibilities to the child.

Other states classify child abandonment as a misdemeanor (with lesser penalties), including situations that involve non-physical acts of abandonment.

In general, child abandonment occurs when:

A parent, guardian, or other person having physical custody or control of a child

Without regard for the mental or physical health, safety, or welfare of the child

Knowing leaves a child (typically under the age of 13) without supervision by a responsible person (typically over the age of 14), or

Fails to maintain contact with the child or provide reasonable support

For a specified period of time

In the criminal context, child abandonment is defined as physically abandoning a child, but may also include emotional abandonment such as failing to provide the necessary needs to a child. For example, in some states, a parent may be guilty of abandonment if they fail to provide necessary clothing, food, shelter or medical care for their child. In other states, however, parents are only punished for deserting a child with the intention to abandon.

Statutory Rape

Statutory rape refers to sexual relations involving someone below the "age of consent." People below the age of consent cannot legally consent to having sex. This means that sex with them, by definition, violates the law.

Statutory rape laws vary by state, with states setting the age of consent differently, as well as using different names to refer to this crime. Many states punish statutory rape under laws addressing sexual assault, rape, unlawful sexual intercourse or carnal knowledge of a child. There are very few federal **laws** dealing with statutory rape.

In **Bishnudayal v. State of Bihar**, where the victim, a girl of 13 or 14, who was sent by her father to accompany the relatives of his elder daughter's husband to look after her elder sister for some time, was forcibly 'married' to the appellant and had sexual intercourse with her, the accused was held liable for rape under section 376.

However under section 376 B, IPC sexual intercourse with one's own wife without her consent under a decree of judicial separation is punishable by 2 to 7 years imprisonment.

1. No Requirement of Force

Statutory rape differs from other types of rape, and from child molestation, in that the act would not be a crime if all participants were above the age of consent. Unlike "forcible rape," statutory rape can involve underage participants who willingly engage in sexual relations. However, because those under the age of consent cannot give legal consent to sex, the act is a crime whether or not force is involved. If the act involves force or coercion, many states prosecute the offender under the separate statutes punishing child molestation or aggravated rape.

In **Mana Ramchandra Jadhav v. State of Maharashtra** the victim left her mother's house and started living with the accused because her mother had declined the proposal of her marriage with the accused on the ground that she was too young. While she was with the accused they had sexual intercourse which was against her will. The act of intercourse with the prosecution will be covered under this clause.

Age of Consent

The age of consent varies from state to state. Many states set the age of consent at 16 years old, while others set it at 17 or 18.

Historically, statutory rape has been a "strict liability" offense, meaning that it does not matter whether what the perpetrator believed the victim was old enough to consent to sex. Some states now allow the defense that the perpetrator had reason to believe, and did believe, that the minor was above the age of consent. However, in many states this defense is not allowed, meaning that the act was a crime regardless of what the perpetrator believed the victims age to be. In states that do allow such a defense, it often cannot be used if the victim was particularly young, commonly under the age of 14.

Factors Affecting the Level of Offense Charges and Penalties

Laws punishing statutory rape often include a spectrum of offenses, ranging from misdemeanors to high level felonies. In general, two main factors affect the level of offense for an act of statutory rape: (1) the age of the victim; and (2) the age difference between victim and perpetrator. Other factors, including any prior sex offenses committed by the offender, whether drugs or alcohol were involved, and whether pregnancy resulted, can also affect the level of charge imposed.

For example, in some states sexual relations with someone less than 12 or 14 years old constitutes a first degree felony, while sex with someone older but still below the age of consent, might be a misdemeanor or lower level felony. In other states, any act of statutory rape constitutes a felony, with serious and sometimes mandatory jail sentences resulting.

State laws vary widely on these factors, with almost each state using a different calculation method to classify the level of offense. The range of offenses within a single state can involve multiple factors and include a broad range of charges.

Some states impose harsher penalties when the offender is a certain number of years older than the victim. Other state have statutes in which the age of the perpetrator alone (over 21, for example), pushes the act into a higher level of offense.

Punishment for statutory rape can include mandatory prison or jail sentences, probation, fines, and mandated treatment services. Many states require those convicted of statutory rape to register as sex offenders.

Crime Against Children: Legal Provisions

India is the second most populous country in the world and is a home for 430 million children which means 42% of the total population in India. Out of the entire population of children, 50% of the population is under care and protection i.e. the protection from child sexual abuse. Child sexual abuse includes rape, sexual harassment, etc. is a problem which has become a growing concern in India. It is a fact that millions of boys and girls are sexually abused within and outside their homes by relatives or by known persons. In India, children are expected to obey and respect others without questioning their actions. The impact of child sexual abuse is worse in India than in any other country of the world.

Child sexual abuse in domestic sphere

Child Sexual Abuse (CSA) is a mental or physical violation of a child with sexual intent, generally by a person who is in the position of power and trust of a child. Apart from the definition, sexual abuse also includes:

Firstly, an adult revealing his/her genital organs to the child and influencing the child to do the same for them i.e. exhibitionism.

Secondly, an adult touches the child's genital organ with hands or with other objects and persuading the child to touch their genitalia i.e. touching and fondling of a child.

Thirdly, an adult having anal, oral and vaginal intercourse with a child with or without penetration i.e. assault which includes rape and sodomy.

Fourthly, an adult is persuading or encouraging a child to hear, read or view any pornographic material.

Fifthly, an adult forcing a child to indulge in any sexual activity.

Sixthly, an adult marrying a minor, or minor marrying another minor is considered to be a forced relation.

Children are not only the victims of child sexual abuse but are also traumatized by the law because they are unaware of the act itself. Due to the trauma which children are suffering, their future gets jeopardized.

There are very few cases of child sexual abuse which are reported. Other victims do not even share their plight with their parents. The worst part is the feeling of silence and shame which characterizes the cases of sexual abuse amongst children. To overcome the detrimental effects of child sexual abuse, youth must be protected from this harm. It is imperative to capture the perpetrators of the sexual assault against Indian children. The increasing menace of child sexual abuse is not just limited to domestic spheres but extended to places which aim at protecting the interests of the child such as Juvenile Justice Homes.

Child Abuse in Juvenile Justice Homes

The main aim of the juvenile justice act is “to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by providing a child-friendly approach in adjudication and disposition of the matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.” In spite of the aim and objective of the Juvenile Justice Act, its implementation has resulted in child sexual abuse in many states. Many of the rape cases have been taken place in juvenile justice homes i.e. with special families, observation homes, or shelter homes, etc. The girls remain at high risk of assault and abuse even in the protection home. There are many cases in which the perpetrator is staff members including caretakers, security guards, etc. In most of the cases, the sexual assault continues for a longer period as victims are not ready to dissent and endure quietly in the absence of inspection. The cases like two minor girls are assaulted by the manager of Baba Deep Jyoti Anath Ashram in Odisha], or boys sodomised by guards and senior inmates at govt. run Ashiana home for boys Delhi or Arya Orphanage Case, Delhi, related to sexual abuse of a child in Juvenile Justice Homes.

To overcome the growing menace of sex crimes against children in India, there are legal frameworks of rights and guarantees enacted in the support of children. These include a vast array of legal enactments ranging from Constitution from one point view to the Indian Penal Code and other statutory provisions like Protection of Children from Sexual Offences Act (POSCO) on the other.

Legal provisions related to child sexual abuse

Until 2012, there was no appropriate legal framework in India which deals with child sexual abuse. Earlier sex crimes against children were protected by section 354, 375, 377,509 of Indian Penal Code, 1860. Section 354 deals with “Assault or criminal force to woman with intent to outrage her modesty,”[5] Section 374 deals with rape, Section 509 states any person who intends to insult the

modesty of a woman through word, gesture or act and Section 377 of the IPC deals with unnatural offence

The pornography was dealt with Young Persons (Harmful Publication) Act, 1956. In the year 2012, the Parliament of India has passed the Protection of Children against Sexual Offences Act (POSCO) for the victims of child sexual abuse below 18 years of age.

Salient features of POSCO Act

Firstly, POSCO Act is gender neutral. The consent of the child is immaterial under this act.

Secondly, this law mandates the reporting and recording of sexual abuse against a child. Section 19(1) of the POSCO Act makes it compulsory to report the offence.

Thirdly, this act lists the sexual crimes committed against a child. Section 3 of the POSCO Act states: “A person is said to commit “penetrative sexual assault” if (a) “he penetrates his penis, to any extent, into the vagina, mouth, urethra, or anus of a child or makes the child to do so with him or any other person”; Since the words “any other person” are used in Section 3(a), women may also be offenders or victims under the second part of Section 3(a)”.

Fourthly, it also provides protection to minors during the judicial process.

Fifthly, “Section 5(j): “Whoever commits penetrative sexual assault on a child, which in the case of female child, makes the child pregnant as a consequence of sexual assault.” However, even in these offences, women can be joined as abettors under Section 16, POCSO Act”.

Provisions of POSCO

- 1) As soon as the matter is reported to the police officer, within 24 hours, the case should be presented before the Child Welfare Committee.
- 2) The statement of the minor should be recorded in his or her home or his or her favorite place only by a female police officer.
- 3) This act also provides a speedy trial and in camera proceedings to ensure confidentiality.
- 4) The minor should not be called in the court repeatedly. He or she may be testified through video from home.

- 5) The medical examination must be conducted by a female doctor, in the presence of a person whom minor trusted. Consent of the parents or guardians if present, otherwise the consent of medical professional on the behalf of a minor is required.
- 6) The defense should route all the question through the judge and cannot ask any aggressive or character assassination questions to the juvenile.
- 7) The minor should not be exposed to accused in any way during the recording of evidence.

Punishment enumerated under POSCO

For penetrative sexual assault, the sentence not less than seven years extended up to life imprisonment along with fine under section 4 of the POSCO Act. Aggravated sexual assault committed by a person of trust or authority like police officer under section 6 would be punished with not less than ten years and extended up to rigorous life incarceration and fine. For the non-penetrative sexual assault committed by a person with sexual intent must be punished with not less than three years and extended up to 5 years of imprisonment under section 10 of the POSCO Act. Under section 10, if the aggravated sexual assault is done by the authority or by the person of trust, it would be punished with not less than five years and extended up to seven years of incarceration. For sexual harassment under section 12 of the POSCO Act, prescribes a punishment of 3 years along with fine. “As per section 42 of the POCSO Act, where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376C, 376D, 376E or section 509 of the Indian Penal Code, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under this Act or under the Indian Penal Code as provides for punishment which is greater in degree.”

Conclusion

Sexual abuse of a child is veiled in secrecy. It is essential for parents and guardians of the child to get sensitized and understand the degree of the problem. It is also crucial for the parents to create a protective environment for the child and to guide their children how to protect themselves from sexual abuse.

Juvenile Justice System

India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions

for children. The Directive Principles of State Policy specifically guide the State in securing the tender age of children from abuse and ensuring that children are given opportunities and facilities to develop in a healthy manner in conditions of freedom and dignity.

Juvenile can be defined as a child who has not attained a certain age at which he, like an adult person under the law of the land, can be held liable for his criminal acts. The juvenile is a child who is alleged to have committed /violated some law which declares the act or omission on the part of the child as an offence. Juvenile and minor in legal terms are used in different context. Juvenile is used when reference is made to a young criminal offenders and minor relates to legal capacity or majority.

The Juvenile Justice (JJ) system is based on principles of promoting, protecting and safeguarding the rights of children. It was enacted by the Indian Parliament in 1986. In the year 2000, the Act was comprehensively revised based on the United Nations Convention on the Rights of the Child (CRC), which India had ratified in 1992; the Beijing Rules; the United Rules for the Protection of Juveniles Deprived of their Liberty; and all other national and international instruments, thereby clearly defining children as persons up to the age of 18 years(Section 2 (k) of the Act defines ‘child’ as a person who has not completed eighteen years of age. The Act is based on the provisions of Indian Constitution and the four broad rights defined by the UN CRC:

- Right to Survival
- Right to Protection
- Right to Development
- Right to Participation

This Act repealed the earlier Juvenile Justice Act of 1986 and has been further amended in years 2006 and 2011. The Juvenile Justice (Care and Protection of Children) Act, 2000, is the primary legal framework for juvenile justice in India. The JJ Act primarily focuses on the twin interrelated aspects of juvenile delinquency and handling of children in need of care and protection. The JJ Amendment Act, 2006, brought substantive changes to the JJ Act, 2000. It has been enacted to provide for care, protection, development and rehabilitation of neglected, delinquent children and includes within its ambit child labourers. Section 2 (d) (ia) includes ‘working children’ within the purview of a ‘child in need of care and protection’. The Act broadened the scope of rehabilitation of the child in need of care and protection, or of a juvenile in conflict with the law, through not only the institutional but also the non-institutional approach.

The JJA creates a juvenile justice system in which persons up to the age of 18 who commit an offence punishable under any law are not subject to imprisonment in the adult justice system but instead will be subject to advice/admonition, counseling, community service, payment of a fine or, at the most, be sent to a remand home for three years.

Juvenile Justice (Care and Protection of Children) Act, 2000, has the following issues:

- delays in various processes under the Act, such as decisions by Child Welfare Committees (CWCs) and Juvenile Justice Boards (JJBs), leading to high pendency of cases.
- delay in inquiry of cases leading to children languishing in Homes for years altogether for committing petty offences.
- increase in reported incidents of abuse of children in institutions.
- inadequate facilities, quality of care and rehabilitation measures in Homes, especially those that are not registered under the Act, resulting in problems such as children repeating offences, abuse of children and runaway children.
- disruption of adoption and delays in adoption due to faulty and incomplete processing and lack of timelines.
- lack of clarity regarding roles, responsibilities, functions and accountability of Child Welfare Committees and Juvenile Justice Boards.
- limited participation of the child in the trial process, delays in rehabilitation plan and social investigation report for every child.
- lack of child-friendly procedures by Juvenile Justice Boards and conduct of Board sittings in Courts in many districts.
- lack of any substantive provision regarding orders to be passed if a child apprehended for allegedly committing an offence was found innocent.
- no specific provisions for reporting of abandoned or lost children to appropriate authority in order to ensure their adequate care and protection under the Act.
- non-registration of institutions under the Juvenile Justice Act and inability of the states to enforce registration due to lack of any penal provisions for non-compliance.

- lack of any check-list of rehabilitation and re-integration services to be provided by institutions registered under this Act.
- inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, ragging etc; and
- increase in heinous offences committed by children and lack of any specific provisions to deal with such children.

Recent controversy

As per the reports of the National Crime Records Bureau (NCRB) entitled “Crime in India 2011” and “Crime in India 2012,” the percentage of crimes committed by juveniles as compared to total crimes has not significantly increased from 2001-2012. According to the NCRB statistics, India is not in the throes of a general crime wave by juveniles. However, the NCRB statistics relating to violent crimes by juveniles against women are very troubling. “Crime in India 2011” suggests the number of rapes committed by juveniles has more than doubled over the past decade from 399 rapes in 2001 to 858 rapes in 2010. “Crime in India 2012” records that the total number of rapes committed by juveniles more than doubled from 485 in 2002 to 1149 in 2011.

As the data suggests, between 2011 and 2012 alone, there was a massive increase in instances of rape by juveniles by nearly 300, which is almost as much as the increase in such cases over the entire previous decade. This increase alone makes amendment of the JJA imperative.

The brutal Delhi gangrape case has bought forth a new controversy related to juvenile justice in India. One of the accused, as per police record and, according to reports, the most aggressive of the lot who brutalised the young girl, is a minor of 17 years.

In India the sentencing and trial of juvenile offenders is mandated and governed by the Juvenile Justice Act 2000. Section 15(1)(g) of the JJ Act mandates that a juvenile convicted of any offence can be sentenced to a special home for a period of three years, maximum and thereafter be released on probation. As the accused happens to be a juvenile the maximum time that he shall serve is three years or 1095 days in a special rehabilitation home.

The biggest reason for our current system is the supposed rehabilitation of the offenders. A glimpse of this may be found in the rechristening of the word offender to ‘Juvenile in conflict with the law’.

But there is no logical or scientific reason which shows that total and complete rehabilitation can be achieved by a delinquent/ offender/ child in conflict with the law within a maximum period of three years. In the case of the Delhi rapist, even if one were to say that the boy needs to be rehabilitated and that perhaps the reason for his barbaric and animalistic act was a deep-rooted psychological problem, there is no assurance that the issue can be dealt with in three years. Of course, the absolute lack of implementation of the provisions of the JJ Act after a juvenile completes his sentence is another concern. India's massive population makes it impossible to track and ensure that a juvenile once released continues with his therapy or even reports regularly to his parole officer. With this basic and undeniable truth it is a matter of simple calculation that in all probability the Delhi rapist shall be on the streets within the next three years that's 1095 days with nothing more than a stint in a special home in the name of absolute and complete Rehabilitation.

Thus the demand came up is that juvenile who commits crime of this gravity should not be left to walk free after serving maximum of 3 years that too in special home.

In this backdrop, the Government of India is now contemplating re-enacting a new JJ Act, 2014, for which a review committee has been constituted under the Ministry of Women and Child Development. The baton has been passed on to Parliament to enact a new law.

The Bill seeks to achieve the objectives of the United Nations Convention on the Rights of Children as ratified by India on December 11, 1992. It specifies procedural safeguards in cases of children in conflict with law. It seeks to address challenges in the existing Act such as delays in adoption processes, high pendency of cases, accountability of institutions, etc. The Bill further seeks to address children in the 16-18 age group, in conflict with law, as an increased incidence of crimes committed by them have been reported over the past few years.

The Bill defines a child as anyone less than 18 years of age. However, a special provision has been inserted for the possibility of trying 16-18 year olds committing heinous offences, as adults. A heinous offence is defined as one for which the minimum punishment under the Indian Penal Code is seven years.

The Bill states that one or more JJBs to be constituted, for each district, for dealing with children in conflict with law. JJBs are composed of a Metropolitan or Judicial Magistrate and two social workers, one of whom shall be a woman. *f* Powers and responsibilities of the JJBs include: (i) ensuring legal aid for a child; (ii) adjudicating and disposing of cases related to children in conflict with law; (iii) conducting regular inspection of adult jails to ensure no child is lodged in such jails

and other inspection visits and; (iv) conducting inspection visits of residential facilities for such children.

Other provisions in the Bill are:

- **Children's Court:** A Children's Court is a Court established under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012. It will try 16-18 year olds that commit heinous offences, after confirming that they are fit to be tried as adults. It ensures that a child in conflict with law is sent to a place of safety until he attains the age of 21 years, after which he is transferred to a jail. During the child's stay in the place of safety, reformatory services such as counselling, etc. shall be provided. The Court shall ensure periodic follow up reports by District Child Protection Units.
- **Child Welfare Committees (CWCs):** States shall constitute one or more CWCs for each district for dealing with children in need of care and protection. The powers and responsibilities of a CWC include: (i) conducting inquiries; (ii) selecting registered institutions for the placement of a child and; (iii) addressing orphans, abandoned children, surrendered children and sexually abused children, etc.
- **Special Juvenile Police Units (SJPU) and Child Welfare Police Officers:** An SJPU will be established in each district, consisting of a police officer and two social workers. One Child Welfare Police Officer will be present in every police station.
- **Adoption:** Prospective adoptive parents must be consenting. A single or divorced person can also adopt, but a single male cannot adopt a girl child. Parents must be physically fit, financially sound, and mentally alert and motivated to adopt. Regulations regarding adoption shall be framed by the Central Adoption Resource Authority.
- **Penalties:** Any official, who does not report an abandoned or orphaned child within 24 hours, is liable to imprisonment up to six months or fine of Rs 10,000 or both. The penalty for non-registration of child care institutions is imprisonment up to one year or fine of one lakh rupees, or both. The penalty for giving a child intoxicating liquor, narcotic or psychotropic substances is imprisonment up to seven years or fine of one lakh rupees, or both.

The draft Bill therefore provides a comprehensive mechanism to deal with children in conflict with law as well as children who are in need of care and protection. However, only a stringent implementation can provide a meaningful disposition to make it a true letter of law.

Thus the improvement of the juvenile justice system is a gradual process, which requires intensive and continual follow-up as well as long-term commitment rather than a series of ‘ad hoc’ exercises and ‘knee-jerk’ responses. Training programs should be based on participatory techniques that promote sensitization and behavioral changes among the various stakeholders responsible for the working of the juvenile justice system. Training also creates opportunities for stakeholders to interact amongst themselves and get a better understanding of the constraints and bottlenecks at various levels.

It is vital for the authorities involved in the juvenile justice system to build effective partnerships with civil society. Non-Governmental Organisations (NGO’s) have the capacity to provide community-based life-skills programs, ‘group counseling’, community work opportunities, and open ‘custody group homes’ for children in conflict with law. Voluntary sector organisations can thus help the governmental agencies to engineer a substantial shift towards non-custodial alternatives for corrective measures involving juveniles.

THE HINDU (ARTICLE)

Calls to dilute the Juvenile Justice Act in light of what is perceived as lenient punishment to the juvenile offender in the Delhi gang rape case are understandable but misplaced. The crime shook the country’s conscience, brought forth an unprecedented outpouring of anger and triggered collective introspection on the safety of women and girls. But even though there is a view that the young perpetrator has been able to get away lightly, this is not reason enough to question or do away with the principles underlying juvenile justice. Separate legislation has existed in many countries around the world since the early 20th century for the care and protection of children, including child offenders. The present system in India was introduced by a 1986 Act and improved upon in 2000. The JJ Act, 2000, a progressive legislation, replaced the regular judicial process with a reformatory regime, favouring supervised probation or stay in an observation home over imprisonment. The law tries to reform a young offender’s conduct rather than confine him for decades in a prison with adult criminals, which only works to fan recidivist tendencies.

While refusing to allow the Delhi gang rape juvenile offender to be tried as an adult, the Supreme Court pointed out in its order that underage crime still forms only a tiny percentage of the large body of crime in the country. However, merely going through a differential process for juvenile offenders is not enough. It is obvious that the social contract underlying a lenient regime requires equal attention to be paid to the design and implementation of a proper rehabilitation process. Society will only countenance shielding young offenders guilty of great brutality from the rigorous of adult

justice if it is confident that they will indeed benefit from the rehabilitative approach to juvenile justice. In India, we need to guard against the complacent belief that a stint in a remand home is enough for their rehabilitation. The atmosphere in many such facilities is not conducive for reformation, and in fact may toughen or entrench criminal propensities. The system should not end up creating a new underclass that combines a sense of triumph over avoiding a prison term after committing heinous crimes, with the psychological effects of staying under bleak, hope-denying conditions. Making juvenile correctional facilities more humane is one part of the answer. But to address the need for proportionality not so much in punishment as in the necessity of socio-psychological repair when a young offender commits truly heinous crimes, a longer period of sustained counseling and rehabilitation ought to be an essential part of the juvenile justice process even after the maximum period of remand is over.