



CRIMINAL LAW VIS-À-VIS CRIME AGAINST CHILDREN IN INDIA: AN ANALYSIS

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Abstract

There is no strict definition of a law that covers all its ambit. A law is a collection of acts, rules, regulations, legislation, codes, and other documents that aim to achieve justice, order, peace, and morality in a society. The criminal law in India is governed by the Indian Penal Code (IPC) of 1860 and the Criminal Procedure Code (CRPC) of 1974. IPC is a substantive law, i.e., "a law that governs the original rights and obligations of individuals." CRPC was passed by the British parliament in 1861 in the wake of the 1857 mutiny and had amendments in 1882 and 1898. There were 1,28,531 crimes recorded against children in India last year. Madhya Pradesh, Uttar Pradesh, West Bengal, and Bihar account for more than half of all crimes against children committed in India. This paper will be analysing three criminal offences, i.e., child sexual abuse, child marriage, and child labour. "Madhya Pradesh", "Uttar Pradesh", "Maharashtra", "West Bengal", and "Bihar" account for more than half of all crimes against children committed in India. India has more than 450 million children, and nearly 40% are susceptible to all sorts of abuse. Last year, nearly 43000 CSA cases were registered under POCSO. An 88% increase in child marriages in August 2020, when India was in complete lockdown, was reported in comparison to the previous year. In India, there are nearly 10 million child labourers, with industries like brick kilns, garment making, carpet weaving, food eateries, mining, etc., employing a major chunk of them.

Introduction

The terms "law" or "laws" are used in a variety of contexts, like when science students talk about gravitational laws, motion laws, mechanics laws, and so on. But what concerns this paper is the definition of law in the legal sense, so taking that in mind, a law is a collection of acts, rules, regulations, legislation, codes, and other documents that aim to achieve justice, order,

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peace, and morality in a society. Various legal philosophers have also defined the law. “Salmond” says that "the law may be defined as the body of principles recognised and applied by the state in the administration of justice." Austin says, "law is an aggregate of rules set by men politically superior or sovereign to men as politically subject, and it is a command which obliges a person or persons to a course of conduct." Like mentioned earlier, these definitions are also not inclusive and have been subjected to various criticisms. Unlike law, justice can't be codified. It is a universal value that encompasses the ideas of righteousness, fairness, and morality. Serving justice is the topmost goal of any legal system, and the law is a tool for doing so.

Issues Raised

Overview of Criminal Law in India: Provides an overview of the criminal justice system in India, with a focus on the Indian Penal Code (IPC) of 1860 and the Criminal Procedure Code (CRPC) of 1974. Discusses the historical background and pillars of the criminal justice system.

Child Sexual Abuse (CSA): Explores the definition and impact of child sexual abuse, citing statistics and referring to the Protection of Children from Sexual Offences (POCSO) Act. Raises concerns about the poor implementation of the act and suggests measures for improvement.

Child Marriage: Addresses the high prevalence of child marriages in India, discusses the legal provisions under the Prohibition of Child Marriage Act (PCMA) of 2006, and identifies challenges, including the recent surge during the COVID-19 lockdown.

Child Labour: Explores the issue of child labor, defining it and citing the Child Labour (Prohibition and Regulation) Act of 1986. Discusses the reasons behind child labor, the impact of the COVID-19 pandemic, and measures to combat the practice.

Review Of Literature

The research paper explores the multifaceted realm of criminal law in India, emphasizing its diverse components, including acts, rules, regulations, legislation, and codes. The introduction provides a comprehensive definition of law, highlighting its role in establishing justice, order, peace, and morality in society. The criminal law in India is dissected, focusing on the Indian Penal Code (IPC) of 1860 and the Criminal Procedure Code (CRPC) of 1974, tracing their historical origins and amendments.

A stark reality is presented with the alarming statistics of crimes against children in India, particularly in states like Madhya Pradesh, Uttar Pradesh, West Bengal, and Bihar. The paper delves into three specific criminal offenses against children: child sexual abuse, child marriage, and child labor. Child sexual abuse is scrutinized with a focus on the Protection of Children from Sexual Offences (POCSO) Act of 2012. Despite the Act's comprehensiveness, issues of poor implementation, lack of awareness, and delayed justice are underscored. Child marriage, a pervasive issue in India, is examined through the lens of the Prohibition of Child Marriage Act (PCMA) of 2006, with a critical analysis of its flaws and the challenges posed by the societal norms and economic factors.

The scourge of child labor is explored, emphasizing its detrimental impact on children's physical and mental development. The Child Labour (Prohibition and Regulation) Act of 1986 is discussed in detail, along with the complexities surrounding poverty, familial pressure, and child trafficking contributing to the persistence of this issue.

The conclusion highlights the need for a more unified and streamlined legal framework, emphasizing the necessity of eradicating nebulous provisions and implementing comprehensive police reforms. The role of the judiciary and its existing challenges are acknowledged, advocating for swift resolutions to ensure an effective justice system. The paper concludes with a call for ongoing amendments and adaptations in the justice system to counter evolving criminal tactics.

Criminal Law In India

"The criminal justice system" in India follows an "Adversarial system" in which "the prosecution and defence compete against each other, and the judge serves as a referee to ensure fairness to the accused and that the legal rules of criminal procedure are followed. The adversarial system assumes that the best way to get to the truth of a matter is through a competitive process to determine the facts and application of the law accurately"². The criminal law in India is governed by the "Indian Penal Code" (IPC) of 1860 and the "Criminal Procedure Code" (CRPC) of 1974. IPC is a substantive law, i.e., "a law that governs the original rights and obligations of individuals." On the other hand, CRPC is a procedural law, i.e., "a law that establishes the rules of the court and the methods used to ensure the rights of individuals in the court system." The CRPC and IPC are both British-era statutes, though the

² United Nations Office on Drugs and Crime, 'Adversarial versus Inquisitorial Legal Systems' <<https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>> accessed 9 December 2021

reasons behind their genesis are different. Before the Britishers arrived in India, Muslim law used to govern criminal law in India for both Hindus and Muslims, and even after the advent of the Britishers, for a couple of decades, the criminal jurisprudence was a heterogeneous mixture of Muslim and British laws. The first Indian Law Commission was appointed under Section 53 of the Charter of 1833 when the conflict between existing British and local laws started hampering the judicial process. The commission consisted of T. B. Macaulay, J. M. Macleod, G. W. Anderson, and F. Millett as its members, and they presented the first draft of the Penal Code in 1837³. After various law commission reports, debates, and commentaries, the Indian Penal Code was finally passed in 1860. The code of criminal procedure, on the other hand, was passed by the British parliament in 1861 in the wake of the 1857⁴ mutiny and had amendments in 1882 and 1898. The version of CrPC that is in existence today is the result of a major amendment in 1973 that was brought in after the suggestions of the 41st Law Commission report⁵.

There are four main pillars of the criminal justice system in India, i.e., Police, Court, Prison and Legal Aid.

Crimes Against Children

Nelson Mandela once said, "Children are our greatest treasure. They are our future. " And here we are with 1,28,531 crimes recorded against children in India last year. Children are vulnerable to various horrendous offences like rape, kidnapping for ransom, prostitution, trafficking, marriage, and pornography, to name a few. The number of cybercrimes against children also witnessed an unfortunate 400% boom in the year 2020. "Madhya Pradesh", "Uttar Pradesh", "Maharashtra", "West Bengal", and "Bihar" account for more than half of all crimes against children committed in India. This paper will be analysing three criminal offences, i.e., child sexual abuse, child marriage, and child labour, and will also be discussing the law against them, how they fall short in delivering proper justice, and measures to improve their efficiency.

³ Atul Chandra Patra, 'AN HISTORICAL INTRODUCTION TO THE INDIAN PENAL CODE' (1961) 3(3) JILI <<https://www.jstor.org/stable/43949716>> accessed 6 December 2021

⁴ The Times of India, 'CrPC was enacted after 1857 mutiny' <<https://timesofindia.indiatimes.com/city/hyderabad/crpc-was-enacted-after-1857-mutiny/articleshow/3010641.cms>> accessed 6 December 2021

⁵ Tilak Marg, 'Code of Criminal Procedure, 1973 (CrPC)' <<https://tilakmarg.com/acts/code-of-criminal-procedure-1973/>> accessed 6 December 2021

Child Sexual Abuse

The WHO has given the definition of CSA, or child sexual abuse, as "the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society."⁶ India has more than 450 million children, and nearly 40% are susceptible to all sorts of abuse⁷. Last year, nearly 43000 CSA cases were registered under POCSO,⁸ and the most spine-chilling fact is that most of the offenders are family member, family friends or neighbours of the victim⁹. In this age of the digital world, when internet penetration in India is at an all-time high and will continue to increase, the menace of online CSA is also one of the major challenges that face the country today. Interpol mentioned in its report that India reported over 2.4 million online CSA cases between 2017 and 2020 and that the demand for CSAM (child sexual abuse material) is increasing constantly.¹⁰ Sometimes children are not even aware that they are being exploited because of the techniques like "online grooming" in which the offender befriends the child online and gains his/her trust, then asks for obscene materials. This is evident from the data released by "The Internet Watch Foundation," according to which, there is an increase of 77% in child 'self-generated' sexual material in between 2019 to 2020¹¹.

The POCSO Act (2012) is the main legislation in India that deals with sexual crimes committed against children. The law is very comprehensive because it includes a wide array of acts that can be considered offences, like stalking, making a child expose themselves, etc. A child is any person who is below eighteen years of age. It also distinguishes various types of offences,

⁶ World Health Organization Regional Office for Africa, 'CHILD SEXUAL ABUSE: A SILENT HEALTH EMERGENCY'

<<https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1%26isAllowed=y>> accessed 9 December 2021

⁷ Mannat Mohanjeet Singh, Shradha S. Parsekar and Sreekumaran N. Nair, 'An Epidemiological Overview of Child Sexual Abuse' (2014) 3(4) JFPMC <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4311357/>> accessed 9 December 2021

⁸ Hindustan Times, '43,000 offences under POCSO Act registered last year: AG KK Venugopal to SC' <<https://www.hindustantimes.com/india-news/43000-offences-under-pocso-act-registered-last-year-ag-kk-venugopal-to-sc-101629800727264.html>> accessed 9 December 2021

⁹ The Logical Indian, '90% Of Abusers Are Known to Victim: How This NGO Is Prepping Families to Fight Child Sexual Abuse' <<https://thelogicalindian.com/exclusive/lockdown-child-sexual-abuse-cases-20852>> accessed 9 December 2021

¹⁰ India Today, '24 lakh online child sexual abuse cases with 80% girls under 14 reported in India from 2017 to 2020' <<https://www.indiatoday.in/india/story/24-lakh-online-child-sexual-abuse-cases-girls-under-14-india-2017-2020-1877928-2021-11-18>> accessed 9 December 2021

¹¹ Internet Watch Foundation, 'Grave threat to children from predatory internet groomers as online child sexual abuse material soars to record levels' <<https://www.iwf.org.uk/news-media/news/grave-threat-to-children-from-predatory-internet-groomers-as-online-child-sexual-abuse-material-soars-to-record-levels/>> accessed 9 December.

which include aggravated sexual offences, aggravated penetrative sexual offences, and non-penetrative sexual offences. The most significant quality of this act is that it is gender neutral, i.e., it recognises that offending boys sexually is a possibility too. Before POCSO came into existence, sections like “354 (assault or criminal force to woman with the intent to outrage her modesty), 375 (rape), and 509 (word, gesture, or act intended to insult the modesty of a woman) of the Indian Penal Code (1860)” were invoked to deal with CSA.

Despite having such an exhaustive act, the record of providing justice to the minor victims is still dismal because of the poor implementation of the act. POCSO wasn't even invoked in over 57% of the total number of child rape cases that were recorded in India in 2017¹². This reflects poor knowledge of the act and its nuances among the police officers. According to a report released by the Kailash Satyarthi Children's Foundation, "every day, four child victims of sexual offences are denied justice due to the police closing their cases filed under the POCSO act due to insufficient evidence." The pending POCSO cases are also a huge impediment in the way of attaining justice. The act also maintains that "a case of child sexual abuse must be disposed of within one year from the date of the offence being reported."¹³ This provision is in shambles, which is evident from the report of Praja Foundation, according to which of all the cases that were filed under POCSO in 2019, 99% of them were still pending in December 2020.

On paper, the POCSO Act appears to be ideal legislation for child sexual abuse. The act was recently amended in 2019 with some commendable new provisions like: a clear definition of child pornography, enhanced punishment, and recognising the administration of artificial hormones to children to attain early sexual maturity as a sexual offence. However, in order to truly implement it on the ground, the government must remove institutional bottlenecks such as a lack of specific fast-track courts, a lack of sensitization among police, and delays in filing FIR, and should also ensure increased compensation for the victim, care for the mental health of the child victim, and continuation of his/her education, as well as train police personnel in the competent handling of forensic samples.

¹² News 18, ‘17,500 Children Were Raped in a Year. The Law to Ensure Justice for Them Wasn't Used in 10,000 Cases’ <<https://www.news18.com/news/india/pocso-was-not-invoked-in-57-cases-of-child-rape-in-2017-reveals-ncrb-data-2374457.html>> accessed 9 December

¹³ POCSO Act 2012, s 35(2).

Child Marriage

India has the highest number of child brides in the world, with more than 1.5 million child marriages taking place each year in the country¹⁴. According to UNICEF, child marriage is defined as "any formal marriage or informal union between a child under the age of 18 and an adult or another child." Child marriage does injustice to the child on multiple levels; it just robs away their childhood. Though child marriage has a negative impact on both boys and girls, the girl child faces far more challenges, such as having her education hampered and becoming sexually active at an early age, which increases the chances of STDs. There are two major reasons behind such marriages: deep-rooted orthodoxical norms and poverty. A major chunk of the Indian population lives in rural India, with a lack of education and a sense of conformity to traditional tenets that are often skewed against girls. This gives rise to sexist ideas like "the main duty of a girl is to take care of her husband and children," "there is no need for education for girls because she might start questioning the authority of males in the house, etc." Early marriage is also viewed as a means of transferring responsibilities and saving money on their upbringing, especially in poor families.

The prohibition of child marriage act (PCMA), 2006, deals with child marriages in India. Before this, the child marriage prevention act (CMRA) of 1929, a.k.a. the Sharda act, was used to tackle this practice. The legal age of marriage in India is 18 years and 21 years for girls and boys, respectively. This act has provisions to punish the families of both the child and the groom if he is an adult, i.e., 18 years or older, and all those performing, participating, or abetting a child marriage¹⁵. "A woman cannot be imprisoned under this act, and offenders can be punished with up to two years of imprisonment and/or a fine of up to Rs 1 lakh for violations." This law also has some serious flaws. Like under section 3 of the PCMA act, child marriage is not "void ab initio" but "voidable" at the option of the minor contracting party. The apex court also observed the same in court on its own motion (*Lajja Devi*) v. state (2012)¹⁶. However, it should be void ab initio because minors are frequently unaware of such provisions, and even if they are, they must wait until they reach majority to file a case for annulment of the marriage, and that too, within two years of attaining majority. And after all these impediments, if either of them decides to file a case, they will face tremendous familial pressure. This provision is quite

¹⁴ UNICEF, 'Ending child marriage and adolescent empowerment' <<https://www.unicef.org/india/what-we-do/end-child-marriage>> accessed 9 December

¹⁵ The Prohibition of Child Marriage Act 2006, ss 9-11.

¹⁶ "Court on its Own Motion (*Lajja Devi*) v State" [2012] CriLJ 3458

problematic on many levels. For example, on one hand, the PCMA designates child marriage as a criminal offence, but on the other hand, it says that it is not void. Looking outside PCMA, section 375 of the IPC, the foremost legislation in the country against rape, also indirectly aided child marriage. According to Exception 2 of Section 375, "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." That means sexual intercourse with a minor girl aged between 15 and 18 was allowed. But thanks to the supreme court, it struck down this provision of section 375 in "Independent Thought v. Union of India (2017)".¹⁷

The fight against child marriage was bearing fruit, with the proportion of girls married before the age of 18 falling from 47 percent to 27 percent in a decade¹⁸, but the onset of COVID-19 may have derailed the strides that have been made over the decades. An 88% increase in child marriages in August 2020, when India was in complete lockdown, was reported in comparison to the previous year¹⁹. A recent report on the impact of COVID-19 on child marriage was released by UNICEF, according to which India is among the five countries that account for half of the child marriages in the world²⁰. With all these considerations in mind, it seems impossible that SDG goal 5.3, which also talks about eradicating child marriage by 2030, would be achieved. Other than COVID, there are some supreme court judgements and state-specific marriage registration acts that function as roadblocks in the fight against this practice by creating confusion. Recently, "the Rajasthan assembly passed a bill amending the 2009 Act [Rajasthan Compulsory Registration of Marriages Act] that provides for the mandatory registration of marriages." But the shocking provision of the amendment was that it also allowed the registration of child marriages. The rationale given by the Rajasthan government was that the supreme court in *Seema v Ashwini Kumar and ors* (2006)²¹ had held that the state should enact laws for the registration of all sorts of marriages, so child marriages should also be registered. The state government later called back the bill after public furore.

¹⁷ *Independent v Union of Indian* [2017] 10 SCC 800

¹⁸ Global Citizen, 'Child Marriage Numbers Drop Sharply Around the World' <www.globalcitizen.org/en/content/child-marriage-decrease-unicef-report-india/> accessed 10 December 2021

¹⁹ The Wire, 'Rise in Child Marriages in the Lockdown: How the Centre Ignored Data of Its Own Nodal Agency' <<https://thewire.in/rights/rise-in-child-marriages-in-the-lockdown-how-the-centre-ignored-data-of-its-own-nodal-agency>> accessed 10 December 2021

²⁰ The Hindu, '5 countries including India account for about half of total child brides in world: UNICEF' <<https://www.thehindu.com/news/national/5-countries-including-india-account-for-about-half-of-total-child-brides-in-world-unicef/article34019696.ece>> accessed 10 December 2021

²¹ *Seema v Ashwini Kumar* [2006] 2 SCC 578

This abhorrent practice of child marriage cannot be curbed by legislation and penal provisions alone; it also needs the proper sensitization of the whole population through village outreach programmes, workshops, radio and television. The central government also runs a number of schemes in order to incentivize the education of girls, like "beti bachao beti padhao," and "sukanya samridhi yojana." There are various state-run schemes also, like "Kanyashree Prakalpa" in West Bengal and "Bhagyashree Scheme" in Karnataka. NGOs have a much more important role in tackling such social evils because they work on the ground level and are aware of the prevailing conditions. As a result, the government should actively fund such NGOs; it is not only the government's fight, but also the fight of society as a whole; with the help of civil societies and active citizens, we can defeat such social evils more quickly.

Child Labour

A famous adage goes like this: "Childhood is the most beautiful of all life's seasons." Indeed, it is, but not for all. Millions of children in India and the world over haven't experienced such a beautiful phase of life. It has been stripped from them mercilessly by depriving them of education and the right to good health and by illegally ladening them with hazardous and dangerous work by mostly informal industries to save money. The international labour organisation (ILO) defines child labour as "work that deprives children of their childhood, their potential, and their dignity, and that is harmful to physical and mental development." There are more than 160 million child labourers globally, which means 1 in every 10 children on this planet is a child labourer²². The census 2001 office of India defined child labour as "the participation of a child less than 17 years of age in any economically productive activity with or without compensation, wages, or profit. Such participation could be physical, mental, or both." Article 24 of the Indian Constitution prohibits the employment of a child in hazardous work. In India, there are nearly 10 million child laborers²³, with industries like brick kilns, garment making, carpet weaving, food eateries, mining, etc., employing a major chunk of them. Economic deprivation is the major reason behind child labour. When the main breadwinner of the family fails to earn the amount that is required for their basic sustenance, children are often forced to work either with their parents or in the industries. This reason was also asserted by the Gopalswamy committee, which was constituted in 1979 to examine the situation of child labour in the country, by mentioning that "as long as poverty continued, it would be difficult to totally eliminate child labour and hence, any attempt to abolish it through legal recourse would

²² UNICEF, 'child labour' < www.unicef.org/protection/child-labour > accessed 10 December 2021

²³ The Wire, 'On Child Labour Day, It's Clearer than Ever that Lockdown, Weakened Labour Laws Spell Doom' <thewire.in/rights/lockdown-child-labour-day> accessed 10 December 2021

not be a practical proposition." Child trafficking is also a major reason behind child labour, which is tangible from a report by the ILO, which mentions that in 2005, nearly 980,000 to 1,225,000 children were in forced labour situations as a result of trafficking²⁴.

In India, the Child Labour (Prohibition and Regulation) Act, 1986 is the main legislation against this practice. Under this act, children are classified into two groups: first, children who are under 14 years of age and those between 15 and 18, i.e., the adolescents. Children under 14 are not allowed to work in any form, with some exceptions like helping family, in a family enterprise, or as child artists after school hours or during vacations. But adolescents can be employed, though only in non-hazardous industries. Violators are liable for imprisonment ranging from 6 months to 2 years, or a fine of 20,000–50,000 or both. There are also a few provisions that directly or indirectly aid the fight against child labour, like, “The Factories Act of 1948, The Mines Act of 1952, The Juvenile Justice (Care and Protection) of Children Act of 2000 and The Right of Children to Free and Compulsory Education Act of 2009.”

The fight against child labour has been consistent, with the number of children at work falling from 1.26 crore in 2001 to 43.53 lakh in 2011, according to the 2011 census²⁵. But here too, the pandemic has derailed the efforts. A sudden rise in child employment has been reported among impoverished families facing acute financial issues due to lockdown. “According to a study conducted by the West Bengal Right to Education Forum (RTE Forum) and the Campaign against Child Labour (CACL)”, the state has witnessed a sudden rise in child labour among school-going children during the COVID-induced lockdown²⁶. This trend is not limited to India alone but is being witnessed all over the world.

Conclusion

The criminal law in India is a concoction of new and old legislation. Most of the time, they complement each other and cover the lacunae of the preceding one, but sometimes they also create confusion and unintentionally hamper the effort to provide speedy justice. The government needs to eradicate such nebulous provisions and try to unify all the legislation dealing with a particular crime instead of having multiple acts. But only acts and codes cannot

²⁴ International Labour Organization, ‘Trafficking in children’ <<https://www.ilo.org/ipecc/areas/Traffickingofchildren/lang--en/index.htm>> accessed 10 December 2021

²⁵ Ministry of Labour and Employment, ‘About Child Labour’ <<https://labour.gov.in/childlabour/about-child-labour>> accessed 10 December 2021

²⁶ Hindustan Times, ‘Child labour among school going children increased in lockdown period in West Bengal’ <<https://www.hindustantimes.com/education/child-labour-among-school-going-children-increased-in-lockdown-period-in-west-bengal/story-c6KxomHlk3FOOba1Ehf0yH.html>> accessed 10 December 2021.

come to the rescue when the institutions whose job it is to implement and interpret them are marred by inefficiency and unprofessionalism, i.e., the police and the judiciary. It is high time now to implement the long-impending police reforms. The judiciary also has many vacancies and suffers from acute infrastructural problems. These shortcomings should be resolved quickly. One should keep in mind that no criminal law in any country can be perfect. Criminals will always try to devise new techniques to evade the justice system. So, our justice system should also go through the required amendments and changes from time to time to match them so that whenever and wherever a criminal, thinks about committing a crime, the thought of being behind bars should cross his/her mind a number of times.
