

# CHILD LABOUR AND THE INDIAN CONSTITUTION

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## ABSTRACT

The present research paper aims, in general, to identify the parameters and constraints of the justice System for children in India. It also describes the nature, scope, and structure of Justice that is delivered to children in India. The present paper also analyses the strengths and weaknesses of the existing legislation for evolving a comprehensive and integrated Justice System for these underprivileged children.

Keywords: labour, Indian, constitution, system

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Adolphe Quetelet, the eminent Belgian social statistician avered that children, particularly the young males are prone to crime, disorder and delinquency because of their childish impulsiveness. According to him, "the age when strength and passions have reached their height, yet when reason has not acquired control to master their combined influence." A child is born innocent and if nourished with tender care and attention, he or she will blossom with facilities physical, mental, moral and spiritual, into a person of stature and excellence. On the other hand, noxious surroundings, neglect of basic needs, bad company and improper laws would spoil the child and likely to turn him a delinquent.

The Justice System for children as conceived by legislation aims at providing care, protection, treatment development and rehabilitation of delinquent and neglected children engaged in child labour. During the seventh UN congress on the prevention of crime and the treatment of offenders, three approaches to child justice were identified, namely, the due process model, the welfare or *parens patriae* model and the participatory model. Like most of the other justice system, the system for providing justice to children in India too can not be described entirely in terms of one of these models but rather in terms of a combination of them, with features from the welfare, modified justice, and crime control models.

It can be said very boldly that the Justice System in India for labored children, after traversing a long, arduous and challenging path has matured itself today to take care of children who are in need of care, protection and welfare services on the strength of its conviction that the State has a special obligation to children as they are the future of the society. The Constitution of India, under Article 15(3) enables the State to make special provisions for women and children. Article 39 specifically mentions that the health and strength of workers, men and women, and children of tender age are not abused and children are given opportunities and facilities to develop in a healthy manner. The National Policy for children adopted by the Government of India in 1974 also reinforces this spirit by proclaiming that "the Nation's children are a supremely important asset. Their nurture and solicitude are our responsibility". The fairness of System for children, therefore, brings within its ambit not only the children coming in conflict with the Law, but all those who are vulnerable to be indulged in crimino-genic culture under the pressure of many situational compulsions.

Such an approach naturally calls for the fullest understanding of child deviance and recognizes firstly, that the children, by reason of their physical, psychological and social maturity can not be equated with an adult and therefore their needs are to be treated in a

differential manner. Secondly, maladjustment among children is indicative of society's failure to provide them 'adequate care and treatment. And thirdly, investment on the re-socialization of erring children and to bring them back to main stream of life is the best investment for the human resource development. The underlying principle of this stand point is that all children irrespective of their creed, color, economic, social and religious background should be provided with opportunities and facilities enabling them to develop themselves, physically, mentally, socially, morally and spiritually. It contemplates to provide a special care and protection to the children who are handicapped because of their delinquency and destitution through variety of socio-legal measures.

The legislation incorporating the justice to the children has been making provisions for the care, protection, treatment, development, and rehabilitation of neglected or delinquent children, and for the adjudication of certain matters relating to and disposition of delinquent children. Its provision governs the relationship between children and the police, adjudicatory bodies, correctional homes, probation services, community participation and after care programmes.

A majority of children are unhappy in the institutions and the casework services are inadequate in terms of diagnosis, counseling, and planning of rehabilitation. Many institutions have no vocational training programmes. Correctional institutions do not equip children with the necessary skills to take care of themselves after discharge. The main socialization agents, the caretakers, are the lowest paid, least qualified, and at times even ill-informed about the needs of the institutionalized children. Coordination among various departments exists primarily because of administrative necessities rather than as a necessary element of efficient functioning. A majority of children do not get a job in the particular trade in which they are trained during their institutionalization- either due to inadequate training or because they are not interested in that type of job owing to poor salaries. Due attention has not been given to the development of preventive measures – like assistance to families in trouble-which is one of the major contributory factors leading to delinquency and maladjustment among children. Very few after-care services are available. Despite a statutory provision to the contrary, children are not always released on bail.

Justice System in India for children is malfunctioning, primarily because it is an ill-coordinated adjudication, and correction-frequently operates haphazardly with little knowledge of what the other segments are doing. This non-co-ordination leads to an inefficient utilization of resources and retards the process of justice. Lack of resources, unsuited and improperly qualified personnel and sporadic and fragmented implementation of the child Justice Act, are symptomatic of the inherent malaise, namely, absence of a systematic approach to provide adequate justice to the working children.

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