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THE LEGAL FRAMEWORK FOR JUVENILE JUSTICE IN INDIA

Co-authored by- Neelima Singh & Mehvish Jallu

Children are to be considered a gift from God, but the way they have been treated by a few people, the hard labour they are forced to do and the heinous crimes that are been committed against them, has made us to degrade such great gift from God. Under this chapter, we shall deal with the Indian judicial point of view on sexual abuse of children, as well; also, we shall have a detailed study of the juvenile justice system, which will include the detention centres as well as the juvenile justice board.

2.1 INDIAN LAWS AND JUDICIARY ON THE ABUSE OF CHILDREN

In the current era, the quantum of crimes against the children have increased rapidly, which has created an unsecured environment for the children. The responsibility to make the world a better and secured place for the children, falls on the judicial authorities as well as on the legislatures, where the laws are made one and are put in action to deliver justice by another.

The children are provided with a good number of rights, which are recognised nationally as well as internationally. The UNCRC believes that “Child rights go beyond just human rights” therefore, UNCRC provides the following rights as the fundamental rights that all children are born with and that must be taken care of by the nation and its legal system -

1. Right to Survival: The right to life/ to born, health, nutrition, name, nationality, live with dignity.
2. Right to development: It includes the freedom to engage in leisure activities, the right to education, the right to care and the right to all types of mental, physical and emotional development.
3. Right to Participation: It includes the rights related to religion, expression, opinion, information.
4. Right to Protection: It provides freedom from exploitation, abuse, neglect and all sort of violence.

These above mentioned have further been incorporated under various articles of our Constitution, under the following articles-

1. Article 21 provides “the state with a fundamental right and the basic principle of the constitution, to protect every citizen's life and liberty, including children. The judiciary has played a significant role in broadening the scope of Article 21 so that it now speaks for the right to a healthy environment, a life with dignity, the right to clean water and air, adequate

food, clothing, and shelter, as well as the right to access to all basic necessities for life, including basic health care and sanitation.”

2. Article 14, “every citizen must receive equal protection under the law without any discrimination and be treated equally before the law.”

3. Article 15(3), “discrimination is illegal, although the state may provide exceptional accommodations for children and women.”

4. Free and obligatory primary education for all children in the age range of 6 to 14 became a constitutional guarantee, as stated in Article 45 of the constitution, which obligated the state to implement such measures. A new article, 21A, was substituted for this article by the 86th amendment, which was passed in response to the Unni Krishnan¹ case. Under “clause k of Article 51-A, it was stated that providing for their children's primary education was likewise a fundamental responsibility of parents.”

5. According to Article 47, “it is the state's primary responsibility to ensure a high standard of living, improve nutrition to protect the public's health, and outlaw the use of drugs and alcohol unless absolutely necessary for medical reasons.”

6. According to Article 24, “it is against the law to employ a child under the age of 14 in a mine, a factory, or any other type of dangerous labour.”

7. Articles 23 and 35 of the Constitution “prohibit human trafficking and forced labour, respectively, and they also spell out the penalties for doing so.”

8. Article 39(f) mandates that policies be focused on ensuring that kids have the chance and resources to learn good manners so that their childhood and adolescence are free from exploitation and moral and material abandonment.”

Indian Judiciary has provided the nation with various landmark judgements making the constitutional provisions persistent and the laws more prevalent. A few of the landmark judgments are as follows-

1. MC Mehta v. State of Tamil Nadu²

The Hon'ble Supreme Court held that “engaging children in such hazardous work is a violation of Art. 39(f), Art 45, and thus illegal.” Further it stated that “the vision of constitution towards children and emphasised on how this problem is prevalent in India that it needs the focus of state and the Union Government, their lack of zeal is the biggest reason for the growth of such problems.”

2. Laxmikant Pandey v. Union of India³

¹ 1993 SCC (1) 645.

² 1990 SCC (3) 318.

The case was related to false practices by the agencies and other organisations in regard to adoption of children in countries. The courts felt the need to provide for a consistent adoption law and thus provided for the adoption guidelines for the foreign parents, which was under the Guardian Act of 1890.

3. Mohini Jain v. State of Karnataka⁴

In this case, the court emphasized the importance of providing all citizens with the necessary education, which is the state's responsibility.

4. J.P. Unni Krishnan v. State of Andhra Pradesh⁵

In this case, the court put the emphasis on providing the good quality of education, not just education, as under Article 21-A. It further stated that the state has a duty to provide a good quality of education without any discrimination and this shall include the juvenile delinquents in the jail or the correction home.

5. Vishal Jeet v. Union of India⁶

The aforementioned case involves sexual exploitation of children in red-light districts due to factors such as poverty, coercion, or kidnapping, or because some are born into it. Thus, in this case, the court talked about child exploitation, human trafficking, and the rights of children, for which the apex court directed the law-making authorities to make rules and take actions for the removal of child prostitution and also to take the required actions for providing a better rehabilitative home to the victims of the heinous crimes.

Indian judiciary has provided many such landmark judgments for protection of children from exploitation and safeguarding the fundamental rights of the children, but as it is not a law-making authority, it can only act as an advisor to the law-making authority, that is the legislature, which has to take strong steps in making the world and society a better and safe place for the children, by making acts and amendments in the already existing acts.

The following are the few of the important acts which are made for the protection of children against the exploitation:

1. The Immoral Traffic (Prevention) Act, 1986

The Immoral Traffic (Prevention) Act, 1986 was enacted to prevent the trafficking of people. This act is gender neutral and hence, include both male and female, who are sexually exploited for commercial purposes. This act also includes children, which are either forced into prostitution or are born into, as the rules have been strict for punishing such people who

³ 1987 SCR (1) 383.

⁴ 1992 SCR (3) 658.

⁵ 1993 SCC (1) 645.

⁶ 1990 SCC (3) 318.

try or are exploiting children. Prostitution, by the book is not illegal India, but all related activities, including brothel, soliciting for prostitution, that is everything that comes under commercial purview are punishable offence, for which the Act provides punishments and penalties.

2. The Indian Penal Code, 1860

The Indian Penal Code provides for provisions related to human trafficking as well as for children with criminal liability. Sections 370 and 370A prohibits trafficking of women and girls; they state that “whoever buys or sells a person below the age of 18 years for sexual exploitation, prostitution and other immoral purposes shall be punished with imprisonment under 10 years and fine.”⁷

Further, the IPC completely exempts a child below the age of 7 years of all criminal responsibility, as according to Section 82; as it is believed a child under the age of 7 years cannot understand the consequences of the acts they are committing, thus there is no existence of Mens rea, and therefore no criminal liability.⁸

But the Section 83 of the same act provides for the children from the age of 7 to 12, where they are not completely exempted from the criminal liability. It depends on their understanding of the act they are committing along with the consequences of the committed crime. Thus, the liability depends on the maturity level of the child between the age of 7 and 12.

In the case of Krishna Bhagwan v. State of Bihar⁹, it was stated that a child can be found guilty of an offence if he can understand the nature of the act as well as the consequences of the crime, and has reached the age of 7 years.

3. The Protection of Children from Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012, was enacted to provide “protection to the children from the sexual abuse and any other form of exploitation. It is a unique law that deals specifically with sexual offences committed against children. According to this law, anyone under the age of 18 is considered a minor. All children under the age of 18 are protected by this law from the crimes of sexual harassment, sexual assault, and pornography.”

4. Prohibition of Child Marriage Act, 2006

This act prohibits, the act of child marriage and offers strong punishment for the evil

⁷ Sec.370, Indian Penal Code, 1860.

⁸ *Id.* sec. 82.

⁹ AIR 1989 Pat. 217.

practices of child marriage.

5. Juvenile Justice Act, 2000

The Juvenile Justice Act (JJ Act) of 2000 was enacted to deal with the children who are in need of care and protection and also to amend the laws related to child in conflict with law, who is in need of help and special care. In this act also a child below the age of 18 years is considered as a minor, and thus it is the responsibility of the judiciary to treat the child separately from the adults for the offences committed by them, further, it is the responsibility of the state to provide for a better reformation house for the child.

Judiciary as well as the legislature work well together when it comes to protection of children. The legislature made laws based mostly on directives as provided by the judiciary, which has made protection and preservation of a child's life much better.

The state has tried to provide a slightly beneficial system of rehabilitation homes for the child who are in conflict with the law, but the situation in detention houses is still questionable.

CURRENT CONDITION OF JUVENILE DETENTION

CENTRES IN INDIA

According to many surveys, approximately 40% of the juvenile delinquents in India are living in a worse condition than the adult prisons. As explained hereinbefore, a person below the age of 18 years is treated differently by the judiciary for the crimes committed by them, therefore, the justice system requires them to live in different special homes, not in prisons like adults, as they go through the process of reformation and rehabilitation. But according to the committee established by Supreme Court, which was led by Judge Madan B Lokur stated that approximately 40% of children held live in 'deplorable' circumstances in government-run housing, and no one is being held responsible for this.¹⁰ It has been found that the juvenile homes, which were supposed to protect the juveniles has turned into places where these kids are subject to sexual assault at different levels. In a report prepared by Asian Centre for Human Rights (ACHR) REPORTS *“there are cases of often repeated sexual assault on children in juvenile justice homes. It further provides that 11 out of 39 cases, were reported in the government-run juvenile justice homes. These government homes comprise of observation homes, children's homes, shelter homes and orphanage.”*

As per the report of India Times , “the majority of privately/NGO run homes are not

¹⁰ Chetan Chauhan, “40% of juvenile delinquents in homes worse than jails: SC” , available at: <https://www.hindustantimes.com/india/40-of-juvenile-delinquents-in-homes-worse-than-jails-sc/story-CaWUMuIS7VZrqTqWovpB8J.html>.

registered under Section 34(3) of the Juvenile Justice (Care and Protection of Children) Act, 2006.”

There have been many instances about these detention centres in India, that has made the place that is established to protect the juveniles and preserve their adulthood, has itself left too many scars on the juveniles. Some of the instances happened-

- i. A government run Ashiana Home for Boys at Alipur in Delhi, a 12-year-old HIV positive boy was allegedly sexually abused in the national capital by a security guard and other older inmates.
- ii. In a Suparna Ka Aangan in Gurgaon, Haryana where the owner and 20-year-old caretaker of the NGO allegedly raped minor girl inmate. Both of them were arrested for violation of the Juvenile Justice (Care and Protection of Children) Act, 2000 as the orphanage was not registered and sent to judicial custody.

The above mentioned are two of the few incidents of the heinous crimes that occur in these juvenile detention centres, which have been reported.

Many of the reports about these institutions have blamed the state governments for the repeated occurring of crimes in the detention centres. The governments have now to take required remedial measures to make these homes, a perfect protective area for juveniles.

As the goal of establishing these centres is to help the juveniles, and correct their mistakes, so that they can be a better human and adult, therefore, these homes have to be a safe place for all the juveniles and it is the responsibility of the government of that particular states to have a lookout at these places and provide a safe environment to all the juveniles.

JUVENILE JUSTICE BOARD

The centre of interest in his juvenile court is always the juvenile and his welfare, and not the act or its consequences, which might have resulted in his or her being brought before the court.¹¹ Juvenile Justice Board (JJB) rather than ordinary criminal courts designed to handle criminal matters involving juveniles who are in violation of the law.¹² No defendant will be subject to the death penalty or life in prison if it is determined that they are under the age of sixteen, according to CrPC Section 27 of the 1973 version of the CrPC, which deals with the clause titled "Jurisdiction in the case of juveniles".

¹¹ Juvenile Shelter Homes in India Have Become Homes Of Horror For Many, *available at:* <https://www.india.com/news/india/juvenile-shelter-homes-in-india-have-become-homes-of-horror-for-many-1491516/>.

¹² M.S. Sabnis Juvenile Justice and Justice Correction: Pride and Prudence (Somaiya Publications Pt. Ltd., Bombay & New Delhi, 1996), pg. 81.

The Supreme Court in the case of Ram Singh v. State of Haryana¹³ held that “juvenile legislation shall be supreme in juvenile cases, no matter the nature of the offence committed. Furthermore, to avoid any doubt in this respect, sec. 1(4) of Juvenile Justice (Care and Protection) Act, 2000 states —notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

Therefore, the juvenile justice board is the authority which conducts the inquiry against the juvenile who is in conflict with law. The board comprises of two social workers and Magistrate, having coextensive powers. The said proceedings are mandatory to be completed within the span of 4-6 months, delay in the proceeding leads to termination of the same.

PRELIMINARY ASSESSMENT INTO HEINOUS OFFENCES BY THE BOARD (Section 15)

The juvenile must commit a heinous offence which is defined in section 2 (33) of the act, “heinous offences and includes the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more.”

The elementary evaluation carried out in cases of heinous violations under section 15 must be resolved by the board within a specified time frame of three months from the day the child was first brought before the board. Rule 10A of the Rules specifies the process for performing preliminary assessments. “The board shall in the first instance see if the child is beyond the age of 16 years. While making an evaluation, the child shall be presumed to be innocent unless proven guilty.”

As the whole juvenile justice system is built on treating a child, who is under the age of 18 years in a different manner than the adult, which is put in a very questionable state by the above mention section, section 15, which is considered a violative of Article 14 of the Constitution.

It is shown that the section 15 of the act violates the Right to Equality under Article 14 of the Constitution in two aspects:

First, the treatment of juveniles or children in the age group of 16-18 is different from juveniles or children below 16 years of age. On examination of the impugned section, it is clear that there is no reasonable basis to differentiate juveniles or children in the age group of

¹³ (2000) 6 SCC 759

16-18 from the other ages of juveniles, thereby resulting in a blatant form of inequality for the juveniles and children above the age of 16.

Second, rampant power is given to the Juvenile Justice Board. As per the provision of Section 15 read with Section 18(3) of Act, the Juvenile Justice Board will decide whether they will adjudicate upon the matter or transfer it to the Children's Court based on a preliminary evaluation which takes into regard the mental and physical capacity of the child to commit an offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence.

According to the Standing Committee, which was formed before the Rajya Sabha approved the Juvenile Justice (Care and Protection of Children) Bill, 2014, all parties consulted by the committee agreed that the proposed legislation at the time, which sought to make significant changes to the juvenile justice system, violated Articles 14 and 15 of the Constitution. The Committee Report came to the opinion at the time that the juvenile justice system in place is not only reformatory and rehabilitative in nature, but also acknowledges that the age range of 16 to 18 is a very vulnerable one that requires stronger protection.¹⁴

CASE LAWS ON SECTION 15

1. Durga v. State of Rajasthan¹⁵

Section 15 mentions that a committee consisting of experienced psychologists, psycho-social workers, who have ample experience in dealing with troubled children, should be appointed to conduct the preliminary assessment. However, the Hon'ble Rajasthan High Court observed that the child in conflict with the law, i.e., a girl was not provided 'any effective opportunity of legal representation'. Moreover, the Court also that as required, appropriate psychologists, having sufficient experience of dealing with troubled children were not consulted and the Juvenile Justice Board didn't adhere to the principles of natural justice and without any justification, the child was admitted to the psychiatry department of the MBH Hospital. From this case, the credentials of the professionals available to conduct the assessment and the heinous acts that children have to face due to the crevices left of the system, just in the name of Section 15, are clearly exposed.

The court emphasized upon complying the compulsory requirement of Section 15 of JJ Act 2015 and Rule 10A of the Model Rules, 2016. The court set aside the preliminary assessment

¹⁴ Centre for Child Rights, National Law University Odisha "Practice of Preliminary Assessment Under Juvenile Justice (Care and Protection of Children Act) 2015" available at: <https://www.nluo.ac.in/wp-content/uploads/2019/05/3.Practice-of-Preliminary-Assesment.pdf>.

¹⁵ 2019 CrLJ 2720.

order.

2. Shilpa Mittal v. State of NCT of Delhi and Another¹⁶

The Apex Court has underlined the importance of this provision and held, "The Children's Court constituted under the Act of 2015 has to determine whether there is actually any need for trial of the child as an adult under the provisions of CrPC and pass appropriate orders in this regard. The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining child- friendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in Sub-section (2) of Section 19. Furthermore, under Sub-section (3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformatory services, educational services, skill development, alternative therapy, counselling, behaviour modification, and psychiatric support is provided to the child during the period the child is kept in the place of safety." This case also exposed the lacunae present in the enactment. In this the extremely important and interesting issue arises as to "Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a 'heinous offence' within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015.

To this the Apex Court holds that an offence which does not provide a minimum sentence of 7 years cannot be treated to be a heinous offence. However, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, in such circumstances they shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

3. Rajiv Kumar v. State of Bihar¹⁷

The court herein opined that the preliminary Assessment cannot be made by the Board into offences which are not covered within the definition of 'heinous offences'. The court held that since the appellant had not been alleged to have committed any 'heinous offence', the Board could not have conducted elementary assessment with regard to his mental and physical

¹⁶ AIR 2020 SC 405.

¹⁷ 2020(1) PLJR 662.

capacity to commit such offence, ability to understand the consequences of the offence, physical capacity to commit such offence etc., as provided under Section 15 of the Act of 2015. It could not have even transferred the case of the appellant under Section 18(3) of the Act of 2015 to the Children's Court for trial as an adult.

CONCLUSION

The judiciary of the nation, has provided with rules which are to be followed during the assessment of the juvenile before committing him or her to the detention centres or the correction homes. The guidelines by the judiciary are included in the act, but still the provision of preliminary assessment is proved to be violative of the fundamental rights, for which the legislature has to take steps, and move forward, towards safeguarding the rights of the juveniles.

