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### JUVENILE JUSTICE SYSTEM IN INDIA: THEORY & PRACTICE

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#### ABSTRACT

The juvenile justice system is based on the premise that adolescents have needs and capacities different from adults. Adolescents are still developing mentally, physically, and emotionally, and they are forming their identities. As a result, juveniles who break the law should be treated differently than adults.

In theory, India is only country in the world where the juvenile justice law provides for both children in need of care and protection and children in conflict with the law, but in practice the rights of the child are denied in this comprehensive system of juvenile justice system. Children are not getting their due rights even after 25 years of implementation of a juvenile justice law in India.

#### INTRODUCTION

The juvenile justice system is based on the premise that adolescents have needs and capacities different from adults. Adolescents are still developing mentally, physically, and emotionally, and they are forming their identities. As a result, juveniles who break the law should be treated differently than adults.

While adopting the Declaration of the Rights of the Child on 20th November, 1959, the General Assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. This was followed up by the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", on 29th November, 1985. As a member country, India enacted the Juvenile Justice Act, 1986, in keeping with the Beijing Rules, but after the adoption of the Convention of the Rights of the Child by the United Nations in 1987, the said Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000.

India is the only country in the world where the juvenile justice law provides for both children in need of care and protection and children in conflict with the law. This is because of the focus of the law on taking care of the vulnerable children to prevent their entry into the world of crime. A Rs 1,000 crore (10 billion) allocation for the ICPS (Integrated Child Protection Scheme for a span of five years during the Eleventh Five Year Plan is grossly inadequate to achieve the desired goals of prevention, protection, rehabilitation and reintegration of growing numbers of children in need of care and protection as well as those in conflict with the law.

## EVOLUTION OF JUVENILE JUSTICE SYSTEM IN INDIA

The years following 1950 witnessed both official and non-governmental initiatives that contributed to the development of a more pronounced juvenile justice system in India. To address the increase in neglected and delinquent children as a result of partition of the country into Pakistan and India, the Indian government passed a Central Children's Act (CCA) in 1960. The CCA provided for the care, protection, and treatment of juveniles, and made it applicable in the territories under direct central government rule.

The central government, however, did not make any effort to apply the law throughout the entire country. As a result, states with existing laws were free to enforce their own laws, and other states failed to pass any laws regarding the special treatment of children. Further still in 1974, India declared its National Policy for Children, "recognizing children as a nation's supremely important asset and that their programs must find a prominent place in the national plan for the development of human resources". The policy included, among other things, training and rehabilitation of delinquent, destitute, neglected, and exploited children. By 1986, almost all states had passed their own children's legislation.

These acts lacked consistency in terms of defining delinquency, court procedures, and institutionalization practices, the Indian government felt a need for a children's justice act that could be applied throughout the country. With that in mind, the central government passed the most comprehensive act to date, the Juvenile Justice Act of 1986. (JJA). The JJA was considered a unique piece of social legislation intended to provide care, protection, treatment, development, and rehabilitation for neglected and delinquent juveniles as well as the adjudication of matters relating to the disposition of delinquent juveniles. To accomplish the goals of this legislation, special provisions were made for separate procedures for handling offenders and non-offenders. Juvenile courts were created to deal with juvenile delinquents, and juvenile welfare boards were established to handle neglected juveniles. The final decision regarding the implementation of these courts and boards was left to the respective state governments, but with some stipulations. The Juvenile Justice Act 1986 despite being landmark legislation in the field of juvenile justice failed at various levels to fulfill the aims and goals of ensuring that juvenile delinquents needed special care and protection and had to be viewed in a different light.

The Juvenile Justice (Care and Protection of Children) JJ(C&P) Act, 2000, was enacted 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 adopting a child- friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

The Juvenile Justice Act 1986 was repealed by JJ(C&P) Act. Any action taken under the former Act would be deemed to have been taken under corresponding provisions of this new Act. The Act defines the 'juvenile' or 'child' as a person who has not completed 18 years of age. 'Juvenile

in conflict with law' means a juvenile who is alleged to have committed an offence. An important change brought about by the Act was to replace the existing Juvenile Welfare Board with the Juvenile Justice Board (JJB). According to the Act, children in conflict with the law are to be kept in an observation home while children in need of protection are sent directly to a juvenile home.

The Constitution of India under Article 39-A provides that, "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". This provision has been complied with by inserting Rule 14 under the Central Juvenile Justice (Care and Protection of Children) Rules, 2007 that "Every juvenile is entitled to free legal aid".

The juvenile justice system has been established with a view to take juvenile delinquents out of the jurisdiction of criminal courts and to protect them from technicalities of criminal procedures. Efforts have been made to co-ordinate various agencies to make the judicial system more accessible to the community. Emphasis has been made to create a relationship between the judicial system and members of the community which could help the juvenile court in its decision making process.

The Law relating to juvenile delinquents lay down elaborate provisions for the protection of the rights of the delinquents and provides them with adequate opportunities for their rehabilitation.

### **THE STATUS OF JUVENILE CRIME IN THE COUNTRY**

In theory, India is only country in the world where the juvenile justice law provides for both children in need of care and protection and children in conflict with the law, but in actuality the rights of the child are denied in this comprehensive system of juvenile justice system. The number of cases of juvenile delinquents has increased from 17,203 in 1994 to 30,943 in 2004. The crimes committed by juveniles have also seen an increase in the same period from 8,561 to 19,229.

A major area of concern is the rise of juvenile crimes in the overall crimes committed in the country. In 1994 juvenile crimes amounted to 0.5% of all crimes committed. In 2004 that number has doubled to 1%. According to **HAQ: Centre for child rights** there has been a 7.9% increase in crimes committed by children between 2003 and 2004. In 2005 there was an 11.3% increase in crimes by children. The total crime committed by Juveniles in 2008 is 3156 which increased to 4321 by 2009.

The above increase in crime rates can be attributed to many factors. To begin with, the law needs to be strengthened in order to realize the principles and goals of restorative justice. This requires spelling out clear procedures for dealing with children and reducing the areas of ambiguity,

establishing standards of care and protection and measures for implementing them, laying down other measures that can strengthen the child protection system in the country.

For example, amending the law to ensure that every child care institution in the country is registered under the juvenile justice law will make it mandatory on such institutions to adhere to the standards of care and protection set out in the law and will also provide a data-base on children in need of care and protection, which is lacking even after almost 25 years of implementation of a juvenile justice law in India.

The Next can be attributed to inadequate infrastructure, inadequate human response training. Most of juvenile homes in Delhi NCR region are under capacity both in terms of physical infrastructure and trained human capital. Such settings can be harmful to adolescents too. Juveniles may face higher risks of rape, assault, and suicide when placed in adult prisons, although reliable statistics are lacking. Even in juvenile facilities, though, children may be victimized by staff members. According to a national survey conducted in 2008-09, an estimated 12 percent of young people in juvenile facilities reported sexual victimization by staff members or a peer.

Mental health needs are often urgent for adolescents in the justice system. Many have mental illness (estimates range as high as 60 percent, compared with 20 percent among the total adolescent population). In juvenile detention facilities, many of these problems go untreated or are dealt with inadequately. Suicide rates in juvenile detention facilities are more than four times higher than for adolescents overall. Suicide is even more likely for adolescents confined in isolation.

#### **A REPORT RECEIVED BY NHRC**

Legal Assistance Forum made a representation to the National Human Rights Commission against lodging of juveniles in jails. Pursuant thereto NHRC issued notice on 24.8.2006 to the Inspector Generals of Prisons of all the States/Union Territories to carry out necessary survey to ascertain whether any persons below the age of 18 years is detained in any of the jails within their respective jurisdiction.

As per reports received by NHRC large numbers of juveniles were lodged in jails in various States - in the States of Uttar Pradesh (237), Jammu & Kashmir (1), Tripura (11), Nagaland (8) has Juveniles detained in various jails. In Assam, there were 93 Juvenile in Jails of whom 77 have been sent to Observation Homes and 18 released on bail. (This was pursuant to a judicial order passed by Gauhati High Court on a representation made by Legal Assistance Forum which was treated as PIL). Lodging of Juvenile in jails is a direct violation of proviso to section 10 of Juvenile Justice Act (Care and Protection of Children) Act, 2000.

Accordingly, LAF has made a representation dated 2.12.2009 requesting that NHRC may direct that all these Juveniles be immediately released from the jails and sent to Observation Homes

and State Government to award suitable compensation to the Juvenile lodged in jails depending on the period spent by each one of them in jails.

### **CHILD RIGHTS AND OBSERVATION/SPECIAL HOMES**

Children seem to be easiest victims of most unlawful activities - be it petty penal offences or even something as serious as trafficking or war crimes. Perhaps, this is because of their innocence or their vulnerability or both. Sometimes, juvenile perpetrators of crime are victims of the unlawful activity of someone else. This was graphically brought out by Charles Dickens in *Oliver Twist*. These are all instances of children being victims of acts of commission. But, sometimes they are the victims of omissions - they are entitled to live a normal existence but are denied the opportunity to do so for no fault of theirs. This may well be the worst crime that they are subjected to.

It is essential that due importance needs to be given to Observation Homes set up under the Juvenile Justice (Care and Protection of Children) Act, 2000. We need to regularly monitor if child rights are properly maintained in these institution. As I found through the available data, response of various non governmental agencies and various reports that efforts are not up to the mark to protect juveniles in India. Children faces violation of rights and harassment in observation homes, they are being treated like and adult in many of the cases.

According to Hon'ble Mr. Justice Madan B. Lokur, Judge, Delhi High Court. "I first visited an Observation Home for Boys (OHB) in Delhi about two years ago. Believe me, the conditions prevailing there were nothing like what anybody would expect in a facility for children. There were eight available dormitories, but for good reasons, only five of them were being used for living purposes. There were more than 200 residents from the age of 12 to young men of about 22 years of age living in those dormitories - each dormitory had more than 40 of them. They slept on mattresses spread out on the floor; the toilets were attached to the dormitories and were stinking; cleanliness and hygiene were perhaps not even heard of; there was no segregation of children either on the basis of age or crime and so there were those accused of murder and rape living with those accused of a petty crime. Pending an inquiry, no juvenile may be kept in an Observation Home for more than 18 months. To my shock, I found that many children were in the OHB well beyond this period provided for by law. Was it because their bail application was not being decided or was it because bail was denied to them? Whatever the reason, they could not be kept in custody contrary to law and they needed to be released."

Many children are in the Observation Home because no one really thought about releasing them till the conclusion of their inquiry. Section 15 of the Act provides a maximum punishment of three years stay in a Special Home. Yet, there are children in the Home who had spent more than three years as 'under trials' and so their 'punishment' period is already over. First things first - such children needed to be immediately released.

Of course, the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed there under have excellent provisions for the better 'care and protection' of children, but it is not able to provide juveniles JUSTICE even in a comprehensive framework of juvenile justice system itself.

We need to focus to identify what are the problems coming in the effective implementation of this act and what are the possible alternatives available to resolve the problems of juveniles. Children being supreme asset of the country deserve this attention to be given to them. Our major concern should be the problems juveniles are facing, what are the bottlenecks in effective implementation of the juvenile justice act. And what role various stakeholders can play in bringing out a better and more effective juvenile justice system in India. It is time to seriously think about the gap between the actual act (of juvenile Justice System) and its effective implementation. We need to observe and study the Special/Observation Homes under the purview of Juvenile Justice System regulations in India if they are really acting as correction Homes. We need to actually work upon to find possible solutions to make Juvenile Justice System more effective and robust and contribute our findings to enhance knowledge in this area and thus benefiting community as a whole.

## CONCLUSION

In our country Juvenile crime is going high. The recent Rape case in Delhi gave rise to a debate whether Juvenile age should be reduced to 16 years. Instead of focusing on reducing juvenile crime number on paper we should focus on bringing effective juvenile justice system which also focuses on preventing adolescent from committing crime. The need of the hour is to develop better juvenile crime prevention, protection, and rehabilitation system. We should also discover new ways, how can different stakeholders work together to give meaning to juvenile justice in India i.e. advocates can also render a variety of services, including, offering information and referral, training and education, negotiations, legal services, investigation and monitoring. NGOs and media can bring general awareness among people about the juvenile justice act. Media and NGO's can play a vital role in interacting with those in custody and can encourage them to integrate into society as useful members.

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