



LAW RELATED TO WOMEN AND CHILDREN CHILDREN PROTECTION UNDER JUVENILE JUSTICE SYSTEM

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Abstract

The journal is a socio-legal study and essentially revolves around this theme. The legal aspect covers national issue. As to social study the project work singularly focuses on Indian issues. Broadly, this project tries to study the social issues peculiar to Indian children under juvenile conflict zones and analyses the Indian laws with special reference to juvenile legislation on the protection of children under juvenile trial.

INTRODUCTION

Much has been written about victim children and children in need of care and protection, but very little about juvenile offenders who are the truly neglected children. The state machinery hides them in institutions where no outsider is allowed to tread, and leaves them to their own device with scant attention being paid to their well-being and rehabilitation. On completion of their sentence they are flushed out, ill-equipped to handle life outside of the institution. This treatment meted out to juvenile offenders is most deplorable, especially when juvenile legislation recognizes that juveniles in conflict with law also require care and protection. It should be borne in mind that the Juvenile Justice (Care and Protection of Children) Act 2000, as did the Juvenile Justice Act 1986 and the Children Acts before it, deal with both children in need of care and protection and juveniles in conflict with law, and as the title of the 2000 legislation suggests, it is both the categories of children that require "care and protection. A separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. They are not to be treated in the same manner as are treated adult offenders. The reason for this being that a young person is believed to be less blameworthy than an adult, as he is prone to act in haste due to lack of judgment, easily influenced by others. "...from their inception, youth justice systems have proceeded from the assumption that children and young people, by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of their offences and less able to foresee the consequences of their actions. Linked to this is the belief that the culpability of many young offenders may be further mitigated by the poverty, cruelty or neglect they have suffered." Furthermore, the punishment meted out to adults is perceived to be too harsh to be borne by a young person. The focus of juvenile legislation is on the juvenile's reformation and rehabilitation so that he also may have a chance to opportunities enjoyed by other children. But there is a contrasting view that loudly states that juvenile offenders are committing violent crimes from which society should be protected, and that the juvenile justice system is mollicoddling them. It is apprehended that this latter strain of thinking will gather momentum and pressure will be created to treat juvenile offenders on par with adult offenders or toughen juvenile legislation, especially in respect of serious offences. A child is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. Juvenile legislation attempts to cure his illness by treating the juvenile without doing anything to treat the causes of the illness.

Relevant Legislation in India

The procedure prescribed under JJA 2000 will govern cases concerning juveniles in conflict with law irrespective of the offences they have committed. Juvenile offenders are not to be treated in the same manner as adult accused. Juveniles are to be treated differently as they are less culpable and less capable of looking after themselves. Juvenile legislation lays down a distinct custodial, adjudicatory and sentencing mechanism. The severity of the offence is of no consequence, nor that the offence is covered under a special law or local law. The Supreme Court and different High Courts have held that juvenile legislation shall reign supreme in juvenile cases no matter the nature of offence committed. To avoid any doubts in this respect, JJA 2000 unequivocally states. "Section 1(4) : 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" Hence, whatever crime the juvenile is alleged to have committed, on ascertaining that he is a juvenile his case should be brought before JJB and his custody be with the Observation Home. Thereafter the course taken should be that as set-out under juvenile legislation.

Determination of Age

Despite existing juvenile legislation, persons below the age of 18 years are treated as adults and deprived the benefits of the statute. It is the police who at the first instance incorrectly depict a juvenile in conflict with law to be an adult. The Magistrates and Judges thereafter continue to so treat the juvenile to his detriment. Due to this apathy, children are incarcerated in prisons and sentenced to life imprisonment in absolute violation of the law. The police are known to deliberately portray a juvenile as an adult in order to retain his custody. Once shown to be a juvenile, the accused's custody is shifted to the Observation Home and his control to the JJB. Moreover, the police are inconvenienced by repeated visits to the JJB which is a change to their regular routine. Hence, it is preferred to add a few years to the age of the accused. Magistrates and Judges are too busy to notice that the person produced before them is a juvenile. The accused juvenile due to monetary constraints has no legal representation till the trial stage when a legal-aid lawyer is appointed, and he himself is personally unaware of juvenile legislation to be able to raise the plea of juvenility. The lawyer too often does not suitably advise his client. So many years pass as the juvenile languishes as an undertrial in jail in the company of hardened criminals before his section 313 CrPC statement is recorded. This stage is reached on completion of trial when the court directly asks the accused his age but several years have passed before this stage is reached and the accused could have crossed the age of juvenility. The Magistrate or Judge fail to discern that the young accused was below 18 years of age on the date of offence, and go on to sentence him as an adult. The Supreme Court has in Raisul's case relied upon the age given by the accused in his section 313 CrPC statement in preference to the estimation of the Sessions Court and the High Court. There have been cases where the criminal justice system has not recognized an accused to be a juvenile, and the claim of juvenility is raised for the first time before the Supreme Court. This practice, resulted in the Apex Court in 1984 instructing Magistrates to conduct an inquiry about age when it appeared that the accused was under 21 years of age. The onus is upon the court to take measures to determine the age of the accused. The Criminal Manual issued by the High Court of Judicature (Appellate Side) Bombay for the guidance of the Criminal Courts and their subordinate officers states. "All Courts should, whenever a youthful offender or a party is produced before them, take steps to ascertain his age. If the age given by the Police does not appear to be correct from the appearance of the offender or party, and if the Police cannot produce satisfactory evidence regarding the age, the Court should consider the desirability of sending the offender or party to the Medical Officer for the verification of his age before proceeding with the case.... At the time of the examination of the accused, the Sessions Judge or Magistrate should therefore, specifically ask such accused person his or her age for the purpose of recording it. If the Sessions Judge or Magistrate suspects that the age stated by the accused, having regard to his or her general appearance or some other reason, has not been correctly stated, then the Sessions Judge or Magistrate should make a note of his estimate. The Court may also, when it so deems fit or proper, order a medical examination of the accused for the purpose of ascertaining his correct age. If any documentary evidence on the point of age is readily available, the prosecution may be asked to produce it." The Criminal Manual in Chapter VIII (pg.198) which deals with Child and Young Offenders obligates the Magistrate to ascertain the age of an accused produced before him. The police are required to state the age of the accused and to produce evidence in support of the same. "The best evidence of age is the entry in the Births and Death Register. Where his is not available, the accused person should be got medically examined and a medical certificate obtained in regards to his age. A definite finding with regard to his age should be recorded in every case." If the accused is found to be a juvenile, he is to be produced before the JJB along with his case papers. In Bhola Bhagat's case, the Supreme Court instructs courts before whom a plea of juvenility is raised to hold an inquiry for ascertaining the age of such accused,

and return a finding about his age. Ascertainment of age plays a very important role as it ensures that a juvenile enjoys the protection he is entitled to under law. The best proof of age is the Birth Certificate, but the rate of registration of births in India is very low. The registration of births at the national level in 1995 was 55%. This rate of registration of birth fluctuates from one State to another; in Tamil Nadu it was 90.3% whereas in Rajasthan it was 23.7%. The next best proof of age is the School Leaving Certificate. More persons will possess a School Leaving Certificate than a Birth Certificate as school enrolment rates are high. The gross enrolment ratio in primary education for the year 2002 – 2003 for boys is 100% and for girls 93%. . Even if a child has been merely enrolled in a school and never attended, he will be able to obtain documents that will record his date of birth, such as admission form and entry in school register, and such date will also be reflected in the School Leaving Certificate. Birth Certificate and School Leaving Certificate is the only documentary evidence that is considered for the purpose of determining age. Age mentioned in Ration Cards, Family Cards, Identity Cards issued by the Election Commission of India, etc., is not proof of age, and should not be treated as such by the courts. A Birth Certificate or School Leaving Certificate produced by the accused to denote his age may be gotten verified in the event of the court doubting its veracity. Verification is generally done by police's scrutiny of the original registers from which the extracts have been issued, or by the court examining a representative of the authority that has issued the document or the child's parents/relatives. Even otherwise, the recording of parent's/ relative's evidences in certain cases is important to assist the court in determining the age of the accused. All possible efforts should be made to ensure that a juvenile is treated as such.

Role of Court

“The center of interest in the juvenile court is always the juvenile and his welfare, and not the act or its consequence which might have resulted in his (or her) being brought before the court.” Criminal cases of a juvenile in conflict with law are to be dealt with by JJB, and not the regular criminal courts. This is the mandate of juvenile legislation, enacted since the turn of the 20th century, as well as the Criminal Procedure Code 1898 and 1973. Section 27 of CrPC 1973 states “Jurisdiction in the case of juveniles.- Any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the Court is under the age of sixteen years, may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.” A like provision was also there in the 1898 Code. It is most surprising that though the Criminal Procedure Code has been amended in 2005, section 27 was not altered to bring it in conformity with existing juvenile legislation. With the enactment of juvenile legislation this provision of CrPC has become redundant. The first Juvenile Court in India was established in Bombay in 1927. Initially it was presided over by a Presidency Magistrate who used to sit for a few hours on fixed days. Thereafter, since 1942, the Juvenile Court was manned by a fulltime stipendiary Magistrate who was assisted by a team of experts, such as POs, psychologists. The Children Acts provided for establishment of Juvenile Courts to handle cases of youthful offenders and neglected children. This system of a single authority handling cases of both juvenile offenders and neglected children was diverted from in 1986, when on the international arena, adjudicating the guilt of a juvenile took precedence over “welfarism”. The Indian law, fortunately continued to recognize the importance of social work intervention in juvenile cases. Juvenile Welfare Boards were constituted under the 1986 Act to exclusively deal with cases of neglected juveniles, and the Juvenile Court, to have sole jurisdiction over delinquent juveniles. The Juvenile Courts were to “be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed, of whom at least one shall be a woman, and such panel shall be appointed by the State Government.” It was the POs who used to double as the social workers. The Juvenile Courts, under the JJA 1986, were supposed to consist of a Bench of Magistrates , i.e., two or more Magistrates, one of whom was to be designated as a Principal Magistrate. But in most cases a single Magistrate constituted the Juvenile Court. The chief purpose for distinct handling of a juvenile's case is that such case requires a socio-legal approach as reformation and rehabilitation, and not punishment is the goal. Under JJA 2000, JJB is the “competent authority” in relation to juveniles in conflict with law. . The constitution of the JJB reflects this objective of juvenile legislation. The JJB has to tread a fine path; juveniles are culpable for their criminal acts, but they should not be penalised for such action, instead the aim should be to persuade them away from the enticements of a life of crime. The 2000 Act has given equal importance to the Magistrate and the social workers, they jointly constitute the competent authority to deal with juvenile cases. The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class in a non-metropolitan area, and 2 social workers one of whom at least should be a woman. The Magistrate and the social workers are to function as a Bench, i.e., together, but their roles are distinct. The Magistrate plays an important role in deciding whether the juvenile has committed an offence or not. When the JJB is satisfied that an offence has been committed, then the social workers play an important role in deciding what should be done

for the comprehensive rehabilitation of the juvenile, keeping in view the circumstances in which the offence was committed. It has been rightly put by Barry C. Feld that the Magistrate takes care of the deed and the social workers of the needs of the juvenile. The JJB is bestowed with the powers conferred upon a Magistrate under CrPC. The Metropolitan Magistrate or Judicial Magistrate of the first class, as the case may be, is designated as the Principal Magistrate. In the event of any difference of opinion amongst the members of JJB whilst passing any order, the majority opinion shall prevail. The view of the Principal Magistrate will prevail when no majority opinion is possible. JJBs are required to be constituted in every district by 21st August 2007. The JJB is to have fixed place, days and timings of its sittings. The frequency of its sittings will depend upon the pendency of cases before a particular JJB. Expeditious completion of an inquiry by JJB is vital so that the juvenile's life is not unnecessarily disrupted for a long period, and his rehabilitation process starts at the earliest. Prolonged incarceration pending an inquiry causes trauma to the juvenile, which can be easily avoided. Observation Homes, generally have no facilities for vocational training nor ways to keep juveniles occupied, thus resulting in juveniles getting restless and desperate. Due to prolonged incarceration there have been instances when juveniles have escaped or tried to escape from Observation Homes, or have gone on a rampage causing destruction within the institution. The law recognizing the importance of speedy inquiry has mandated the JJB to complete an inquiry within 4 months from the date of its commencement, and if the same is not possible due to the special circumstances of a case, the JJB is required to extend the stipulated period for completion of inquiry by a reasoned order. . When is a juvenile case said to have commenced; is it when the juvenile is produced before the JJB or is it when the charge-sheet is filed or is it when the juvenile's plea is recorded. The Supreme Court in 1986 has directed the state machinery to ensure the expeditious filing of a charge-sheet and completion of a juvenile's inquiry. We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the first information report and if the investigation is not completed within this time, the case against the child must be treated as closed....” The judgment continues to say that the inquiry should be completed within 3 months from the date of filing of the charge-sheet. Thus by this judgment the case against the juvenile, under the 1986 Act, must be disposed of within 6 months at the latest. The 1986 Act provided, “An inquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless, for special reasons to be recorded in writing, the competent authority otherwise directs.” The 2000 Act has increased this period to 4 months, and has allowed for the time to be extended by the JJB “having regard to the circumstances of the case and in special cases”. So in accordance with the prevailing law a juvenile case should generally be disposed of within 7 months from his arrest at the latest. No period has been laid down under juvenile legislation with regards to the time period within which a charge-sheet should be filed in a juvenile case. It is understood that when a different procedure is not laid down in a criminal statute, the procedure stipulated under the CrPC will apply. . The CrPC does not lay down the period of time within which a charge-sheet should be filed, but states that an accused should be released on bail if charge-sheet is not filed within 90 days of arrest if the offence is one punishable with death, life imprisonment or imprisonment for a term of 10 years or more, and in case of any other offence, if not filed within 60 days of arrest.. In case of a juvenile, Section 167 CrPC should be read as governing the time period within which the charge-sheet should be filed, if the charge-sheet is not filed within the stipulated period, the case against the juvenile should be quashed. Certain JJBs, especially those functioning in metropolises, have huge backlog of cases. A method for curbing this accumulation of cases is by increasing the sittings of the JJB. The back-log of cases before the Mumbai JJB was checked by gradually increasing its sittings. Initially the JJB sat once a week, which was increased to thrice a week and then to all working days. The Bombay High Court directed the State government to constitute an additional JJB for Mumbai Suburban so that the pendency of cases is reduced. Section 14(2) which has been inserted by the 2006 amendment has cast a duty upon the Chief Metropolitan Magistrate or the Chief Judicial Magistrate to “review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.” The law obligates the members of JJB to regularly attend the sittings. The services of a member may be terminated if “he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourths of the sittings in a year.” The intention of the legislature has been confusingly portrayed in the emphasised portion of the preceding sentence, and it requires to be amended. The legislature intends that the services of a member of JJB who attends less than three-fourths of the sittings in a year should be terminated. Moreover, the atmosphere in the Observation Home is elated when the JJB works proficiently, systematically manages its daily cases and expeditiously proceeds with matters. Unfortunately, the functioning of the juvenile justice system is dependant on individuals and their abilities. Therefore, effort must be taken to ensure that the right person is appointed on the

JJB. A Selection Committee must be constituted for the choosing of JJB members, including the Magistrate. Presently, the Magistrate is appointed by the State government in consultation with the Chief Justice of the High Court. The Juvenile Justice (Care and Protection of Children) Rules 2007 provide for selection of social workers for the Board by a Selection Committee, but with regards to the Magistrate it merely mentions, "A Magistrate with special knowledge or training in child psychology or child welfare shall be designated as the Principal Magistrate of the Board", and if no such Magistrate is available, the State government is to provide short-term training in child psychology or child welfare. It is imperative to optimize the functioning of JJBs by selecting a Principal Magistrate who is truly interested in holding such post. This requires a change from the current mode of selection. It would be appropriate, in the best interest of the child, to explore the constituting of a Selection Committee under the Chairmanship of a Judge of the High Court for selection of the Principal Magistrate. The other members of the Selection Committee could include the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, the Secretary Woman and Child Development Department, and faculty of a social work college.

Kofi A. Annan, the Secretary, general of UN observed that 'there is no trust more sacred than the one the world holds with children, there is no duty more important than ensuring their rights are respected and their welfare is protect.... Children are recognized world wide as supremely assets of the Nation. The government of India also through its National Policy for Children has expressed that their nurture and solicitude are our responsibility. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice. Children, because of their supremely importance ought to have been the subject of prime focus of development planning, research, and welfare in India but unfortunately, they still are a 'almost forgotten' lot and required attention has not been paid to this important issue so far. Despite the Constitutional vision of a healthy and happy child protected against abuse and exploitation, and a National Policy for Children, for the majority of children in India it is still a dream and 'the future of the country' continues to live without a cared, protected and meaningful childhood. The juvenile justice system as conceived by legislation aims at providing care, protection, treatment, development, and rehabilitation of delinquent and neglected juvenile. India is a signatory to UN Declaration on The Rights of the Child, 1959 which defined and recognized various Rights of the children namely: The right to health and care, the right to protection from abuse, the right to protection from exploitation, right to protection from neglect, right to information, right to expression and right to nutrition etc have been defined as basic rights of children by the Convention on the Rights of the child.

