

'DEFINITION OF CHILD" & IMPLEMENTATION OF JUVENILE JUSTICE ACT, 2000 - A CRITICAL ANALYSIS OF SOCIO- LEGAL STATUS OF CHILD

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INTRODUCTION

We all believe that today's children are the citizens of tomorrow, but what if they are not allowed to breathe free and live rightfully as the citizens of this nation and are not recognized as adults of tomorrow? Children to be recognized as individual holders of rights must be unanimously recognized as a group, but this becomes a tough job when there are a large number of legislations, all defining the child for their own purposes and reasons. Thus, a uniform approach is required by the law makers of this country to recognize children as citizens and the future of this nation.

However, the question of these rights does not appear till one aspect hinders all the others-identity. The question to ponder upon is, do the children of India actually have an identity? Are these children legally recognized?

WHO IS A CHILD?

A lot of discrepancies appear between various legislations that define who can be called a child. According to the Convention on the rights of the child, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

The Juvenile Justice Act specifies 18 as the legal age but Child Labour (Prohibition and Regulation) Act (India) fixes it at 14 years and Immoral Traffic (Prevention) Act, 1956, at 16 years, while the minimum age of criminal responsibility is fixed at 7 years as per the Indian Penal Code. The minimum age for sexual consent is not fixed for boys and for girls it is 15 years (Law Commission has recommended it to be increased to 16 years). Prohibition of Child Marriage Act, 2006 fixes 18 years as the minimum age for marriage for girls and 21 years for boys. Clearly, the myriad laws in our country do not speak out in unison when it comes to determining who can be called a child.

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ANALYSIS OF THE UN CONVENTION ON RIGHTS OF THE CHILD AND OTHER LAWS WITH VARYING AGES OF HOLDING LEGAL CAPACITY:

Varying ages of legal capacity is a phenomenon that can be seen in many countries. However, while the CRC's definition of childhood can be perceived as setting a basic minimum standard in view of Article 41, which declares that 'nothing in the Convention or any of its provisions shall effect realisation of the rights of the child' under the law of a State Party, it is essential that there is some synchronisation of the upper age limit for childhood. India has achieved this to a large extent, for instance, the minimum compulsory age of education is 14 years. The various laws relating to labour prohibit a person under the age of 14 years to work. Thus, the minimum age at which compulsory education ends synchronises with the minimum age of employment.¹

Article 1 of the CRC defines the holder of rights as 'every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.' The Convention clearly specifies the upper age limit for childhood as 18 years, but recognises that majority may be obtained at an earlier age under laws applicable to the child. The article, thus, accommodates the concept of an advancement of majority at an earlier age, either according to the federal or State laws of a country, or personal laws within that country. However, the upper limit on childhood is specified as an age of 'childhood' rather than 'majority', recognising that in most legal systems, a child can acquire full legal capacity with regard to various matters at different ages.² Thus, while the Convention defines a "child" as every human being below the age of 18 years, it allows for minimum ages to be set, under different circumstances, balancing the evolving capacities of the child with the State's obligation to provide special protection.

INDIAN PERSPECTIVE- THE DISSONANCE:

Accordingly, Indian legislation has minimum ages defined under various laws related to the protection of child rights.³ Though legislation has been enacted to make 18 years the general age of majority in India, 21 years continues to be the upper limit for childhood for some purposes, partly due to the influence of nineteenth-century English Law and partly due to current exigencies.⁴ For example, India recognises 21 years as the age of majority in circumstances where a guardian has been appointed

¹No. NI/PC/SAP/132/2000/908, National Institute for Public Cooperation and Child Development, dated July 31, 2000, GOI at 4

²Savitri Goonesekere, 'Children, Law and Justice: A South Asian Perspective, SAGE' [1998]141

³Implementation Hand Book for the Convention on the Rights of the Child, UNICEF at 1

⁴Child and Law, 'Indian Council for Child Welfare, Chennai, Tamil Nadu, India' [1998]210

by the Court for a child below the age of 18 years.⁵

When considering the pre-natal rights of a child, the legislations in India are in total consonance and harmony with the interpretation of the Convention. The articulation of the 'right to life' in the Indian Constitution reflects the English Common Law approach, as it states that this right is conferred on a "person". Medical termination of pregnancy, although permitted in India, through legislation enacted in 1971, can be taken only be taken recourse to in the following cases, when:

- (i) the continuance of pregnancy would involve a risk to the life of the pregnant woman or a grave injury to her physical and mental health or
- (ii) there is substantial risk that if the child is born, it would suffer from such physical or mental abnormalities that it would be seriously handicapped.

Significantly, Section 20 of the Indian Succession Act gives the right to property to a child in the womb whose parent dies intestate and who is subsequently born alive—he/she will have the same right to inherit as if he or she had been born before the death of the parent.⁶

- The age of capacity to contract a marriage is 18 years for a girl and 21 years for a boy, for all communities. The Child Marriage Restraint Act, 1929, defines a child as a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age. Under Section 5 of this Act whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment up to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.⁷This uniform legislation is an effort to discourage child marriages under personal laws.⁸While the age for ending of compulsory education remains fourteen for both boys and girls.⁹
- The minimum age for sexual consent is 16 for girls¹⁰ while it still remains undefined for boys.¹¹
- The age for voluntary enlistment in the armed forces is 16; however, a person is allowed to take part in active combat only at the age of 18.¹²

⁵*ibid.*

⁶ *Id.*

⁷ *Supra* 6 at 218,

⁸ See note 6.

⁹ NI/PC/SAP/132/2002/908 dated July 31, 2000, National Institute for Public Cooperation and Child Development, Government of India (GOI).

¹⁰ Indian Penal Code 1860, s 375

¹¹ Responses to the List of Issues raised by the UN Committee on the Convention on the Rights of the Child, Department of Women and Child Development, GOI.

¹² *Supra* 9

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- In case of admission to employment or work, including hazardous work, part-time and full-time work, there is a dichotomy between the age of fourteen¹³ and eighteen¹⁴.
- The age of criminal responsibility is twelve¹⁵ while that of Juvenile crimes is eighteen¹⁶.
- In case of deprivation of liberty, including by arrest, detention and imprisonment, inter alia in the areas of administration of justice, asylum-seeking and placement of children in welfare and health institutions there is no age limit for deprivation of liberty because as per Article 21 of the Constitution of India, all citizens have protection to life and personal liberty.
- For the purposes of Capital punishment and life imprisonment¹⁷ and giving testing in court, in civil and criminal cases¹⁸ is eighteen.¹⁹
- For the purposes of lodging of complaints and seeking redress before a court or other relevant authority without parental consent there is no minimum age prescribed for lodging complaints and seeking grievance before a court or other relevant authority without parental responsibility.²⁰
- For participating in administrative and judicial proceedings affecting the child, again no minimum age is prescribed.²¹
- For giving consent to change identity, including change of name, modification adoption, guardianship the prescribed age is eighteen²².
- In case of having access to information concerning the biological family, no particular age has been prescribed.

¹³Child Labour(Prohibition and regulation)Act,1986, Merchant Shipping Act,1958, Motor Transport Workers Act,1961, Apprentices Act,1961, Bidi and Cigar Workers Act,1966, Plantation Labour Act,1951, Factories Act 1948

¹⁴Mines Act 1952

¹⁵Indian Penal Code 1860 ,s 83, according to which, nothing is an offence which is done by a child above seven years of age and under 12 years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. It may be noted that children below the age of seven years are deemed to be incapable of criminal offence as section 82 of the Indian Penal Code.

¹⁶The Juvenile Justice and Protection of Children Act, 2000.

¹⁷NI/PC/SAP/132/2002/908 dated July 31, 2000, National Institute for Public Cooperation and Child Development, Government of India (GOI).

¹⁸*ibid*

¹⁹Indian Evidence Act 1872,s 118 states that all persons shall be competent to testify unless the court considers that they are prevented from understanding the question put to them or from giving rational answers to those questions by virtue of tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind. Therefore all persons irrespective of their age are competent to testify in court provided the adult or child understands the question.

²⁰Supra 17

²¹*ibid*

²²For modification of family relations, adoption and guardianship, there is no minimum age prescribed.

- As far as legal capacity to inherit is concerned, according to Section 20 of the Hindu Succession Act, even a child in the womb has the right inherit property and it shall be deemed from the date of death of one who died intestate. However, as per Section 4 of the Hindus Minority and act, 1956, the guardian will have the powers to take care of the property of such a minor.
- To conduct property transactions the prescribed college is the age of majority, eighteen.²³
- For consumption of alcohol and other controlled substances the prescribed age is twenty one.²⁴

THE MECHANISM OF JUVENILE JUSTICE IN THE COUNTRY AND CHILDREN IN CONFLICT WITH LAW:

India has had interventions on juvenile justice through the first Children's Act, 1960, then the Juvenile Justice Act, 1986 and presently the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the JJ Act). This Act was amended in 2006²⁵ and the Juvenile Justice (Care and Protection of Children) Rules 2007 were notified on 26th October 2007.

Unlike in most other countries in the world, the juvenile justice system, based on the law in India, is designed to address two categories of children:

- (a) those in conflict with law, and
- (b) those in need of care and protection, which includes children who are begging, in prostitution, neglected children, or abandoned children, abused children and street children – all of whom have different needs and vulnerabilities.²⁶

The basis of a successful juvenile justice system rests on a sensitive, trained team of implementers with proper infrastructure to support it so that the children are "handled" sensitively and can be reintegrated into society. That is why it needs to be backed by a force of sensitised and capable judiciary, police and social workers. It is clearly laid down in the law that each district must have a CWC (Child Welfare Committee) and a JJB (Juvenile Justice Board).

In addition, children also need legal representation to ensure justice. Does the current situation in India reflect this?

²³India Contract Act 1972,s (11) states that a person is competent to contract only if he/she is a major and is of sound mind.

²⁴Responses to the List of Issues raised by the UN Committee on the Convention on the Rights of the Child, Department of Women and Child Development, GOI.

²⁵ The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

²⁶EnakshiGangulyThukral, Bharti Ali and Emily Bild, Still out of focus, Status of India's children, 2008 at 162.

JUVENILE JUSTICE- THE JJ ACT: HOW FAR HAVE WE COME?

Establishments of Special Juvenile Police Units (SJPU):

- Despite the JJ Act providing for the establishment of Special Juvenile Police Units (SJPUs) at the district level and designation of a Child Welfare Officer (CWO) from the police force in every police station to deal with children in conflict with law, the situation remains grim.²⁷ In many states the Child Welfare Officers have not been designated. Even the SJPUs are not fully established throughout the country. Even where they have been established, there is lack of awareness within the police department. The police department actually finds it difficult to designate any one police officer as the CWO as they need the entire force for all kinds of duties imposed on them, varying from VIP movement to general law and order.
- Where the CWOs have been appointed they are also handling other cases in addition to those registered under the JJ Act and therefore it becomes a very difficult job for them to run from one court to another and also be present in the JJB with the concerned child.
- CWOs and members of the SJPUs who are appointed need appropriate training and sensitisation to be able to do justice to their role and to the children. The law also provides for two social workers in the SJPUs, who are yet to be appointed in most places.

The Irony- Juvenile Incidences:

Despite changes in the law to avoid stigmatisation of children, the National Crime Record Bureau (NCRB) continues to use the term 'arrested' for children in conflict with law.

- According to the NCRB there has been a marginal increase in the share of crimes committed by Children in Conflict with Law to total IPC crimes reported in the country. In 2005 there had been an 11.3% increase in Crimes under the Indian Penal Code (IPC). The National Crime Records Bureau attributes this increase partly to the increase in the age of delinquent boys from 16 to 18 years as per the new definition of juveniles.²⁸
- The instances of offences by children under Special and Local Laws (SLL) crimes has decreased by 29.0 percent in 2006 as compared to 2005 as 6,662 cases of juvenile delinquency under SLL were reported in 2005, which decreased to 4,729 in 2006.²⁹

²⁷Ibid

²⁸Id at 163

²⁹Id at 164

- Out of a total of 32,145 children apprehended, 83.7 per cent were for IPC crimes while 16.3 were arrested for committing SLL crimes. The highest number was for theft (6,574) among IPC crimes followed by hurt (4,470), burglary (3,657). Surprisingly, 1,672 children have been apprehended for rioting.³⁰
- The highest incidences of offence by children was in Madhya Pradesh (4,976 IPC crimes and 878 SLL crimes), followed by Maharashtra. Six states - Madhya Pradesh, Maharashtra, Chhattisgarh, Gujarat, Rajasthan, and Andhra Pradesh - have reported 72.9 per cent of juvenile crimes under IPC.³¹
- The highest incidence of the total juvenile rape cases in the country was reported from Madhya Pradesh (33.1 per cent) followed by Chhattisgarh, whereas highest incidence of the total juvenile theft in the country was reported from Maharashtra (25.1 per cent) followed by Madhya Pradesh (11.6 per cent) and Andhra Pradesh (9.4 per cent)³²

Pendency of cases:

- In Maharashtra, between April 2006 and August 2006, 1,800 cases of juveniles in conflict with law were reported to have been brought before the JJBs. Between 2001 and 2005 there were altogether 17,052 cases of children in conflict with law (2,810 in 2001, 3,128 in 2002, 3,246 in 2003, 3,652 in 2004 and 4,216 in 2005). With 16,695 cases remaining pending until August 2006, the rate at which the cases are being disposed of is evidently very poor. As per the government's records however, only 2,235 cases are pending disposal.³³
- By the state government's own admission, the rate of disposal is affected by the fact that the number of sittings of the JJBs is less due to the Chief Judicial Magistrate (CJM) of the districts being given an additional charge to handle juvenile justice matters.³⁴
- JJB records show that as of August 2007, about 1,500 cases were pending before the JJB in Bangalore while the government in the NCRB report claims only 360 cases are pending disposal. Some cases are dated between years 2000 and 2002³⁵.

The reasons, for the same, are many, including lack of staff and infrastructural facilities, which disables following orders and sitting the required number of times to administer justice. There is a lack of prosecution services, delay of Charge sheets (6 months or longer), absence of a legal provision which says that cases should be closed if the charge-sheet is not filed

³⁰Id.

³¹Id.

³²Id.

³³Id at 166.

³⁴Id.

³⁵Id at 167.

within the stipulated time, difficulty to trace the child's parents therefore there is no one to sign the *vakalatnama* for the case to move forward. In some cases, parents are not interested in taking their children back. Members of the Board do not have the requisite authority to deal with the cases, they have no training or knowledge of how to read the statutes, they are unaware on how to record evidence and keep the files moving. Parents get disillusioned with adjournments and stop attending the Board's proceedings after some time. There is no provision to reimburse the travel of poor parents who have to come to the Board several times before they can get their child released.

STATUS OF INSTITUTIONS PROVIDED BY JJ ACT & WHAT THE COURTS HAVE TO SAY:

Most custodian institutions are overcrowded and house violence and child abuse. A qualitative study undertaken in an observation home in Delhi in September 2005 which housed boys aged between 7-18 years showed that a large number of drugs were used by adolescents.³⁶ Bullying and beating of children is another problem which these children have to face.³⁷ The Probation Officers also do not entertain the problems of the children. And this is not all; these children have to yield to such pressures in the absence of even basic needs. They are not provided with any facilities for education or proper clothing. Many of them do not even have undergarments. The food provided is not sufficient and often the younger children are bullied by the older ones to part with their food portion and thus go hungry. All the children stay hungry until late evening if there is a short supply of cooking gas. The homes offer no proper medical facilities. Insufficient toilet facilities and scarcity of water means they are not able to bathe regularly, which results in unhygienic personal habits and associated skin diseases and other ailments.³⁸

The Honourable Supreme Court of India has issued notices to all High Courts asking them to appoint a Judge to monitor juvenile justice issues in the state. The Maharashtra High Court exercises direct control over juvenile justice matters. Justice Ranganath Desai has been given the responsibility for reviewing the implementation of the JJ Act. Quarterly reports are invited from him by the High Court. The Delhi High Court has appointed a three member committee that is to monitor the implementation of juvenile justice in the capital.³⁹ The Act envisaged treating children in conflict with the law with compassion and to put them through a reformatory programme to ensure they do not slip into the clutches of crime and anti-social activities when they grow up. That was the precise reason why the Act contemplated proper observation homes, juvenile justice boards and child welfare committees in every district.

³⁶ChetnaMalhotra, Nandini Sharma, RatnaSaxena and G.K. Ingle, Indian Journal of Pediatrics, Drug Use Among Juveniles in Conflict with law, Vol74-

³⁷Aangan, Changing Spaces: Action Research quoted in 'My God is a Juvenile Delinquent' by RuzbehBahrucha. Sainathan Publications, 2008.

³⁸K. K. Devaraj, 'Mumbai's Children' Statement, Bombay Teen Challenge, Mumbai, India, November 8, 2005.

³⁹EnakshiGangulyThukral, Bharti Ali and Emily Bild, Still out of focus, Status of India's children, 2008 at 169.

But, a Bench comprising Justices R.V. Raveendran and H.L. Gokhale had a very poor opinion about the implementation of the law after senior advocate Colin Gonsalves pointed out that only four states and Union territories -- Daman & Diu, Meghalaya, Chandigarh and West Bengal – have fully implemented the Act. The response of additional solicitor general P PMalhotra that "it is for the states to implement the Act and the Centre had nothing to do with it" did not help much in assuaging the anguish of the Bench. It said: "Implementation of the Act is in a pathetic condition and the Centre says it has nothing to do with it. Why do you enact a law then?"⁴⁰

CONCLUSION

"Every child is potentially the light of the world, and at the same time the cause of its darkness"-‘Abdu’l-Bahá

The Juvenile Justice Act holds high objectives of care and protection of children in need for both victims of law and those in conflict with the law. The concept of juvenile justice in India connotes from the traditional criminal justice system. To serve the ends of Juvenile justice, it needs to be severed from the ways and mannerisms of the criminal justice system. Recognition of this independent status to the juvenile justice system by all within and outside the system is a precondition for bringing about any change in formulation and implementation of laws to ensure justice to juveniles. Only then can children be recognized as citizens of this country. It should be observed and ensured that the states have the proper infrastructure and personnel to achieve the objectives of such legislations as the instant one. Children, if they are going to be our tomorrow need to be so recognized, cared for and protected against the sordidness and the wrongs of the world.

⁴⁰Implementation of Juvenile Justice Act poor: SC,TNN), available online at: <<http://timesofindia.indiatimes.com/india/Implementation-of-Juvenile-Justice-Act-poor-SC/articleshow/6149216.cms>>accessed 10 July 2011