



CHILDREN AND LAW

AN INSIGHT INTO THE JUVENILE LEGAL SYSTEM OF INDIA



Public Advocacy Initiatives for Rights and Values in India

E-46, Upper Ground Floor, Lajpat Nagar-III, New Delhi-110024

Ph: 011-29841266 | email: pairvidelhi1@gmail.com | web: www.pairvi.org

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Compiled by Anjali Tripathi and Riddhi Tyagi

Edited by Ajay K. Jha

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E-46, Upper Ground Floor, Lajpat Nagar-III, New Delhi-110024

Phone: +91-11-29841266, 65151897

e-mail: pairvidelhi1@gmail.com

website: www.pairvi.org

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PREFACE

Judiciary is one of the most important organs of democracy amongst the three others which are pillars to a fruitful democracy. Judiciary plays an important role in the success of a democracy. But in India, despite of being the largest democracy in the world, judiciary is on the weaker edge. Laws are made and policies are formulated in order to make justice accessible to all, but due to lack of infrastructure and implementation, these laws and policies does not end up into something effective and fail to serve the society with needed solutions.

Same is the case when we talk of juvenile justice and legal aid. Legal aid is a worldwide legal concept and in a country like India, where there are numerous sections of society those are in need of care and protection and legal services. Through provisions of legal aid, the government strives to make legal facilities available to these sections of society. Juveniles, both, who are in conflict with law and in need of care and protection, have been dealt with in the Juvenile Justice Act. There is a separate act for them since they are more sensitive than the rest and demand greater degree of care and sensitization when dealing with them. These laws not only aim to provide easy justice to juveniles but also focus on providing a more child-friendly environment.

The truth regarding the laws on paper and that on the field differs. Papers show a manipulated story while on-ground scenario narrates the true tale. Thus, this study focuses on the aspects of juvenile justice system and tries to light challenges to it and recommendations for the same. It also connects the concerns of the juveniles with the concept of legal aid as legal aid is also another aspect which is of immense importance when in the fight for justice.

INTRODUCTION

“Children are supremely important national asset”¹ and the greatest gift of humanity², therefore it must be ensured that they are well taken care of and brought up in a positive environment thus making it important that our future remains in safe hands. India has the largest child population of any country in the world, with approximately 450 million children under the age of 18³.

While basic amenities including right to survival and proper care are necessities, every child also has the right to educational facilities for a growing mind to be a helping hand for the society. However in absence of such care, the biggest problem that arises is that of Juvenile delinquency. Juvenile delinquency is a menace alarmingly on the rise all over the world. Juvenile delinquency, also known as "juvenile offending", is participation in illegal behavior by minors (juveniles, i.e. individuals younger than the statutory age of majority).⁴

Children who are a part of the juvenile delinquency system can either be children who require care and protection or children who are juvenile offenders. The former mostly leading to the latter.

Despite various policies and rules, India lacks in providing all its children a protected environment free from abuse and exploitation. A report of UNICEF in 2005 on the state of world’s children under the title “Child under Threat”⁵, for India stated that millions of Indian children are equally deprived of their right of survival, health, nutrition, education and safe drinking water.

¹ *Laxmikant Pandey vs. Union of India*, 1984(2) SC 244, 249.

² *Bandhua Mukti Morcha vs. Union of India* (1997) 10 SC 551-553.

³ UNICEF, India – Statistics, http://www.unicef.org/infobycountry/india_statistics.html#57 , 1 June at 1p.m.

⁴ Siegel, Larry J.; Welsh, Brandon (2011). *Juvenile Delinquency: The Core* (4th ed.). Belmont, CA: Wadsworth/cengage Learning.

⁵ <https://www.unicef.org/sowc/archive/ENGLISH/The%20State%20of%20the%20World%27s%20Children%202005.pdf>, 1 June, 2018 at 11 a.m.



India received 73 recommendations on child rights at its third universal periodic review at the UN Human Rights Council⁶. Around 53 member states gave recommendations to India on 14 specific thematic issues of child rights. Child labor, child marriage and (sexual) violence against children being the most concerned subjects.

According to NCRB reports the rate of Juvenile Crime has increased from 0.9% in 1999 to 2.1% in 2008 which in absolute terms means a rise in incidence from 8888(1999) to 24,535(2008). These crimes seem to have serious socio-economic implications. About 62.4% of Juvenile crimes are committed by children who have never gone to school or have had education till only primary level. Moreover, a large chunk of juveniles (62.2%) belong to the poor families whose annual income is up to Rs. 25,000/. (NCRB .2008).

In order to tackle the problem of Juvenile Delinquency it must first be ensured that there exist national and state policies to cater to the basic rights and needs of children especially those who are in need of care and protection. The next focus should be to target the decline of the juvenile offenders and protect their rights. The third focal point should be to bring the juvenile offenders to justice and giving such children all opportunities of reforming themselves and a chance of mixing with the society again.

To be brought to justice it is imperative that they are represented in the court of law or the Juvenile Justice Boards so to say as prescribed by the Juvenile Justice Act by a competent authority. And thus in a situation where most of these Juvenile offenders come from disadvantaged families with lack of facilities or parental care, legal aid becomes a necessity for them.

It is also imperative that the conditions of observation homes and child care institutions is considerably improved and maintained.

The term “Juvenile Justice” basically refers to the laws made in favor of the juveniles and the mechanism of providing equal opportunities of growth and survival to these juveniles, by thus protecting their rights in prisons.

⁶ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/INIndex.aspx>, 1 June, 2018 at 11: 20 a.m.

Juvenile justice has always remained an avenue of research for legal as well as sociological scholars as it has various socio-legal aspects and implications.

CHAPTER 1

HISTORY OF JUVENILE JUSTICE SYSTEM

ACTS RELATING TO JUVENILE JUSTICE

- **JUVENILE JUSTICE ACT 1986**

The first central legislation on Juvenile Justice was passed in 1986, by the Union Parliament, providing a uniform law on juvenile justice for the entire country. Prior to this, each state had its own enactment on juvenile justice with there being differences in the way juveniles were treated by different state legal systems. This act thus provided care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the settlement of certain matters related to and disposition of delinquent juveniles .It also created equal legislation throughout the country for juveniles thus providing them with equal rights and living situations in all prisons, despite of their location.⁷This Act was enacted in pursuance of the Beijing Rules 1985.⁸

- **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000**

The Juvenile Justice (Care and Protection of Children) Act 2000 was passed taking into consideration all the International standards prescribed as per the Convention on the Rights of the Child, the Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules), The UN Guidelines for the Prevention of Juvenile Delinquency called the Riyadh Guidelines, 1990 and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990). The aims and objectives of this act were:-

- i. To Lay Down a Legal Structure for the Juvenile Justice System in the Country
- ii. To Provide a Special Approach to the Protection and Treatment of Juveniles

⁷ The Juvenile Justice Act,1986.

⁸ <http://indianbarassociation.org/wp-content/uploads/2013/12/JUVENILE.pdf>.

- iii. To outline the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of juveniles
- iv. To establish norms and standards for administration of juvenile justice
- v. To establish linkages and co-ordination between the formal system of juvenile justice and voluntary efforts in the welfare of juveniles
- vi. To constitute special offences in relation to juveniles and provide punishment.⁹

- **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2006**

The Act known as 'The Reformatory Act' deals with two categories of children, namely children in need of care and protection and children in conflict with the law. The Act provides for the establishment of various kinds of Institutions such as

- Children's Home for the reception of child in need of care and protection.
- Special Homes for the reception of child in conflict with law
- Observation Homes which are meant for the temporary reception of children during the pendency of any inquiry
- After-care Organizations which are meant for the purpose of taking care of children after they have been discharged from Children's Home or Special Homes.

A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a child such as assault, causing mental or physical suffering and employment of a child which are considered as non-bailable offences.¹⁰ This Act formed the legal system and framework for the care, protection, treatment and rehabilitation of children. But the act did not prove to be a success. The continuous failure on the part of the authorities in implementation of the act compelled them to launch an Integrated Child Protection Scheme in 2009 to spread awareness about

⁹ Ibid.

¹⁰ <http://www.legalservicesindia.com/article/1449/Salient-Features-of-Juvenile-Justice-Act,2006.html>.

the Act and make it implementable.¹¹ The scheme aimed at bringing various other schemes of child protection under a single scheme. It's goals are-

- i) Improving access to and quality of services;
- ii) Higher public awareness about the reality of child rights, situation and protection in India;
- iii) Articulate responsibilities and enforce accountability for child protection;
- iv) Establishing functional structures at all levels for delivery of statutory and support services to children in difficult circumstances;
- v) Evidence based monitoring and evaluation. (Ministry of Women and Child Development.2008:8)

- **JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2016**

The famous Nirbhaya Gang rape case¹² of 2013 shook the nation and brought to light many flaws which were there in the Rape laws and amended them by an Act of Parliament¹³. Similar defects were detected in the laws concerning juvenile justice and thus, an amended act¹⁴ for protection of rights of juveniles was passed. It was passed because it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.¹⁵

- **REFORMATIVE SCHOOLS ACT, 1897**

¹¹Annexure on Childline

¹² 1998 SCC, Del 879 : (1999) 77 DLT 181

¹³ Criminal Law Amendment Act,2013.

¹⁴ Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁵ Juvenile Justice (Care and Protection of Children) Act, 2015.

It is the outcome of the Reformatory Theory of Punishment. The history of reformation has been a tale of the search of mankind for the absolute correctional technique and of failure. Again and again the idea of reformation through punishment has appeared in one form or the other, as an expression of an idea higher than mere retribution or deterrence. The kind of approach taken by this act is curative. As this act basically deals with children and the focus of this act is to prevent first youthful offender, whose antecedent are not shown to be bad to sent to ordinary jails, which may have the effect of making them hardened criminal, the law as curative measure provide other form of punishment.

First youthful offenders are sent to Reformatory School run by government. There they have every basic facility of food clothing, education and opportunity for exploring themselves. These all measures are under Government control and scrutiny of head of Reformatory School. Offenders are restricted within a particular boundary. This act of imposing restriction acts punishment on them.

However, it does not mean that all the offence of youth is always guided by Reformatory School Act. Certain limitations of this act are:

- The offence of murder which is punishable to death or imprisonment of life, do not include the offence to be dealt with Reformatory Schools Act.
- A sentence of mere fine is not sufficient to order detention in Reformatory School.

Further, the Juvenile Justice Act incorporates and supplements the object and aim of the Reformatory Schools Act in true spirit and sense.¹⁶

- **PROBATION OF OFFENDERS ACT, 1958**

The act embodies modern humanitarian approach of reforming with freedom rather than punishing the offender. In this, behavior of offender is supervised as an alternative to prison. Today, probation is popular than more than 60 % of offender in the United States are granted probation. There are almost five times probationers as adult prisoners.

¹⁶ <http://www.legalserviceindia.com/articles/Reformatory.htm>.

The object of this act is to provide to the convict considering the circumstances of the case, the nature of the offence and antecedent of the offender to reform himself, in order to turn over a new leaf during the period of probation. When a person has committed an error and is not a dangerous criminal but is of weak character or has surrendered to temptation or provocation, the court encourages his own sense of responsibility, for future and protects the offender from stigma and possible contamination in prison.

Also the aim of the act is to prevent the conversion of youthful offender in obdurate criminal as result of their association with hardened criminals of mature age. Before releasing an accused on probation of good conduct, the court takes into consideration overall circumstances of case including nature of offense, character and antecedent of the offender and also the report of probation officer. The question of releasing the accused on probation is the discretion of the court.

The power to release and accused on probation is on the discretion of court. For the purpose of arriving at a decision, whether the accused offender should be extended the benefit of the Act, the court has to take into consideration certain factors such as:-

- The accused offender has been convicted of an offence.
- The offence committed must not be one punishable with death or imprisonment of life.
- The court must be of the opinion that it is expedient to release the accused on probation of good conduct instead of sending the accused to any punishment.
- The offender or the surety must have a fixed abode or regular occupation in a place situated within the jurisdiction of the court.
- The court must take into account the report of probation officer.¹⁷

- **PAROLE RULES**

The word parole means release of prisoner on solemn affirmation and it shall not be counted as remission of sentence. To be descriptive, parole is the act of

¹⁷ Ibid.

being released from a penal or reformatory institution in which one has served a maximum sentence on condition of maintaining good behavior and remaining under supervision/guidance of the institution or some other approval agent until final discharge is granted. Parole is granted by administrative or an executive and is always preceded by serving part of sentence. Parolees are considered as undergoing both punishment and treatment. By parole it meant conditional release of a prisoner from prison but not from legal custody of the state. It should also be noted that, although in the transformatory age parole is granted in most of the instance but it couldn't be claimed by the prisoner as a right.

The State Government under the parole rules grant parole. Competent authorities such as State Government on few instances, commissioner or additional commissioner and in some special cases superintendent of the jail can grant parole.

INTERNATIONAL CONVENTIONS

- **UN CONVENTION ON THE RIGHTS OF THE CHILD (CRC), 1989**

It gives the child a right to be heard in any judicial or administrative proceeding “either directly, or through a representative or an appropriate body” consistent with national law¹⁸. A child in conflict with the law must be “informed promptly and directly of the charges against him or her, and, if appropriate, through his parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense.¹⁹ It further provides that a child in conflict with the law be given “a fair hearing, according to law, in the presence of legal or other appropriate assistance...”²⁰

- **UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE**

¹⁸ Article 12 UN Convention on the Rights of the Child (CRC), 1989.

¹⁹ Article 40 (2) (b) (ii) UN Convention on the Rights of the Child (CRC), 1989.

²⁰ Article 40 (2) (b) (iii) UN Convention on the Rights of the Child (CRC), 1989.

The **United Nations Standard Minimum Rules for the Administration of Juvenile Justice**²¹, often referred to as the **Beijing Rules**, is a resolution of the United Nations General Assembly regarding the treatment of juvenile prisoners and offenders in member nations. Article 15(1) of the rules states that “Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.” Although the Beijing Rules are principally directed at juvenile justice proceedings, their principles can be extended to all matters in which a child’s legal interests are at issue.²²

- **COMMITTEE ON THE RIGHTS OF THE CHILD**

In 2007, the **Committee on the Rights of the Child** addressed children’s rights in juvenile justice proceedings and declared²³ that a child in conflict with the law “must be guaranteed legal or other appropriate assistance in the preparation and presentation of his/her defense,” and that such assistance must be free. “Appropriate assistance” is not limited to legal professionals.

- **UNITED NATIONS GUIDELINES ON JUSTICE IN MATTERS INVOLVING CHILD VICTIMS AND WITNESSES OF CRIME**

The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council²⁴ established that “child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training. This may include assistance and support services such as financial, legal, counseling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration.”

²¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) .Adopted by General Assembly resolution 40/33 of 29 November 1985.

²² See also the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules,” 1990), U.N. Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990), and the U.N. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005).

²³ Committee on the Rights of the Child , General Comment No. 10. Paragraph 49.

²⁴ The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council, resolution 2005/20 of 22 July 2005, in Para. 22.



- **THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND BASIC PRINCIPLES ON THE ROLE OF LAWYERS**

The International Covenant on Civil and Political Rights²⁵ and the **Basic Principles on the Role of Lawyers**²⁶ further emphasize that legal assistance must be offered without charge as necessary to any person facing criminal proceedings.

- **UN PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS**

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems²⁷ give more detail about children's right to legal aid, setting out the special measures that must be taken to ensure that children have meaningful access to legal aid.

- **COUNCIL OF EUROPE GUIDELINES ON CHILD- FRIENDLY JUSTICE**

The Council of Europe Guidelines on Child- Friendly Justice²⁸ provides the most comprehensive and developmentally grounded definition of child-friendly justice to date. The Guidelines include participation as a fundamental principle²⁹ moves beyond other instruments by stating that children should have the right to their “own legal counsel and representation” (as opposed to more generally available representation or legal assistance.) during judicial proceedings. Although the uidelines state that the best interests of children are a “primary consideration in all matters affecting them,”³⁰, the Guidelines also specify that “children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.”³¹. The Guidelines also provide that children involved in judicial proceedings “should have access to free

²⁵ The International Covenant on Civil and Political Rights (Article 14)

²⁶ Principles 3, 6; Basic Principles on the Role of Lawyers.

²⁷ Principles 3, 10, 11; Guideline 10, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.

²⁸ <https://rm.coe.int/16804b2cf3> , 2 June at 2:21 p.m.

²⁹ Part III (A) ((1) & (2). Paragraph IV (D) (2) (par. 37) Council of Europe Guidelines on Child- Friendly Justice.

³⁰ Part III (B) (1) & 2(a-c) Council of Europe Guidelines on Child- Friendly Justice.

³¹ Part IV (D) (2) par. 40 Council of Europe Guidelines on Child- Friendly Justice.

legal aid, under the same or more lenient conditions as adults,”³², and that “lawyers representing children should be trained in and knowledgeable on children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children and young people at their level of understanding.”³³

³² Part IV (D) (2), par. 38 Council of Europe Guidelines.

³³ Part IV (D) (2) par. 39 Council of Europe Guidelines.

CHAPTER 2

LEGAL POSITION OF JUVENILES IN INDIA

The Juvenile Justice Act in India focuses on two categories of children, those in conflict with law and those in need of care and protection mainly abandoned children or those involved in begging, prostitution etc. Therefore categorizing them under two heads – “juvenile in conflict with law”³⁴ & “child in need of care”³⁵

India has actively formulated laws relating to juveniles, first back through the National Children’s Act, 1960, then the Juvenile Justice Act, 1986 and presently the Juvenile Justice (Care and Protection of Children) Act 2000, amended in 2006 and again in 2015.

Juvenile defined:

A juvenile has been defined as ‘a child below the age of 18 years’³⁶. This means any child below 18 years of age shall not be subjected to the general method of trial and shall be tried for their offences according to the provisions laid in the act. However after the act’s amendment in 2015 it allows for juveniles in conflict with law in the age group of 16–18, involved in heinous crimes like rape, to be tried as adults.

Rights of Juveniles

The basis of juvenile justice comes from the constitutional mandate enshrined in Articles 15(3), 39(e) and (f) of the Constitution, from the provisions of the Indian Penal Code and majorly the Juvenile Justice Act.

1. Article 15(3) provides that “Nothing in this article shall prevent the state from making any laws regarding women and children’.
2. Article 39 forms a part of the directive principles of the state policy. *Clause (e)* of Article 39 provides inter alia, that the tender age of children is not abused.

³⁴ Section-2 (1), juvenile justice act, 2000.

³⁵ Section-2 (d), J.J Act, 2000.

³⁶ S. 2 (35), Juvenile Justice (Care and Protection of Children) Act.

Clause (f) stipulates that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment.

3. According to Section 82 of the Indian Penal Code, up to 7 years of age there is an absolute irrefutable presumption that the child is doli incapax. In the case of **Harilal Mallick v. State of Bihar**³⁷ it was held that not only a proof of a child being under 12 but also it has to be proved that the child did not have enough understanding at that point of time and was immature. If no sufficient proof is laid down in front of the court to prove the immaturity of the child then it will be presumed that the child- accused intended to do what he really did. Thus in this case where a child of 12 or so used a sharp sword in killing a person along with his two brothers and no evidence either of age or immaturity or understanding was led on his behalf, thus held liable.
4. The Juvenile Justice (Care and Protection) Act, 2000³⁸, confers several rights on juveniles ensuring that they are not punished or treated like hardened criminals. Some of the rights are –
 - i. Hearing of cases involving juvenile by Juvenile Justice Board (**section-4 & 14**)
 - ii. Bail Provisions for juvenile (**section-12**)
 - iii. No prison term to juvenile. (**section-10, juvenile justice (care and protection) act ,2006**)
 - iv. No joint proceeding of Juvenile and Non Juvenile. (**section-18**)
 - v. Removal of disqualification attached to conviction. (**section-19**)
 - vi. Juvenile Justice Act also contains measures to ensure that a juvenile in conflict of law is given opportunities to reform and rehabilitation. (**section-40**)
 - vii. Establishment of Observation and Special Homes. (**section- 8 &9**)
 - viii. Several acts such as employment of juveniles in dangerous activities, forcing juveniles to beg, or steal, or giving intoxicating substances to a juvenile, publication of names or other details of a juvenile in conflict of law

³⁷ Harilal Mallick v. State of Bihar, AIR 1977 SC 2236.

³⁸ The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

in media, have been made cognizable offences by Juvenile justice act. (section 23-26)

- ix. Supervision by Probation Officer to ensure that a juvenile is not influenced by bad elements. (Section-15)
 - x. **Section 21** of the Juvenile Justice (Care and Protection of Children) Act, 2000³⁹ as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006⁴⁰, states that: “Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act. No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published.
5. When presumption of juvenile innocence is sought to be displaced by the prosecution on the basis of circumstantial evidence the circumstance must unmistakably prove the guilt beyond doubt this has also been seen in the case of **Sakha Ram v. State of M.P**⁴¹. In the case of **Gopinath Ghosh v. State of West Bengal**⁴² the defense of being a minor was raised for the first time.

³⁹ Ibid.

⁴⁰ Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 (33 of 2006).

⁴¹ Sakha Ram v. State of M.P, 1992 AIR 758.

⁴² Gopinath Ghosh v. State of West Bengal, 1984 AIR 237.

CHAPTER 3

CHALLENGES TO JUVENILE JUSTICE IN INDIA

Reasons for deviance in juveniles

When we want to study the problems faced by the juveniles, then our first step needs to be towards understanding the reason behind the coming up of these deviances. Deviances refer to any offence or crime committed by an individual.⁴³ On this issue, many research and studies have been undertaken to bring to light the reasons for juvenile delinquency in India. As psychology suggests, there are different behavioral patterns for different group of individuals. The same idea applies to children. Every child is different in behavior and thinking patterns and at early stages, they are difficult to be identified and categorized. There are significant differences, as measured by the Myers-Briggs Type Indicator (MBTI), between the personality characteristics of juvenile delinquents and the general population.⁴⁴ When comparing MBTI scores of juvenile delinquents to the general population, significant differences were found on the dichotomous scales, temperaments, function pairs, and types.

In a study⁴⁵, delinquent subjects exhibited higher school dropout rates, which they attributed to their own behavioral problems, academic difficulties, or poor teacher-student relationships. Non-delinquent Subjects associated with friends from school; in contrast, delinquent Subjects met their peers in video arcades, street corners, or playgrounds and had close ties to neighborhood gangs

As a child grows, his /her behavior changes from time to time owing to his living conditions, circumstances and various other reasons. These situations or circumstances can also be a reason for delinquent behavior.

Following are the some of the causes of Juvenile Delinquency:-

⁴³ “Suicide” by Emile Durkheim.

⁴⁴ Cavin (2001).

⁴⁵ Wong et al. (2001)

1. **Adolescence Instability:** – The biological, psychological and sociological are one of the important factors in the behavior pattern of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play and etc. And at this age, they want freedom and they wanted to be independent but sometimes they are given any chances and opportunities by their parents, teachers and elders this leads to development of anti – social behavior in them. Thus, this anti – social behavior, biological changes, psychological causes are the some of the reasons which is responsible for juvenile delinquency.
2. **Disintegration of Family System:** – Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.
3. **Economic condition and Poverty:** – Poverty and poor economic condition is also consider has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfill the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by cook and when their desires are met they start themselves indulging in stealing money from homes or any other parents. And this develop habitual tendency of stealing which results into theft at large scale.
4. **Migration:** – Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.
5. **Sex Indulgence:** - The children those who have experienced sexual assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behavior and mind. In this age they may become more vagrants or may want to have sex experience. Too much of

sex variance may lead the boys towards the crime of kidnapping and rapes etc.⁴⁶

6. **Modern Life Style:** – The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.⁴⁷

1. PROVISION OF LEGAL AID

Provision of legal aid still remains a challenge for a greater part of the society even now. On the question of inequality in the administration of justice, Justice P.N. Bhagwati, speaking through the Legal Aid Committee in 1971 had famously observed, “Legal aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement... the poor and illiterate should be able to approach the courts, and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don’t have access to courts. One need not be a litigant to seek aid by means of legal aid.”

The right to legal aid has been enshrined in Article 39 –A of the Part-IV of the Indian constitution (Directive Principles of State policies). It has also been identified as a right under Article 21’s right to life and personal liberty.

The Legal Services act of 1987 is the implementing act and the act establishing the monitoring authorities like NALSA and other state and district level legal services authority and legal services committees at the Supreme Court and the High Courts through amendments in the act.

⁴⁶ Dr. S.S. Srivastava, page no 319, Central Law Agency, 3rd Edition, 2007.

⁴⁷ Prof. N.V. Paranjape, Criminology, Penology with Victimology, page no 665, Central Law Publications, 17th edition , 2017.

In India the legal aid system is not quite successful mainly due to lack of capacity building and for the fact that there is minimal awareness among people. Secondly, legal aid is hardly ever provided to people who come from remote areas, thus defeating the very purpose. The quality of legal aid officers is also in question, with their work getting reduced to forming a money-making nexus.⁴⁸

Despite the established fact that most juveniles come from deprived families and have an underprivileged background there has been lack of adequate facilities for them.

In India there was lack of any focus in this area until Sampurna Behrua highlighted some of these issues by way of a Public Interest Litigation. In the order dated 19.08.2011, Hon'ble Supreme Court of India in **Sampurna Behrua v. Union of India & Ors**⁴⁹ had directed the National Legal Services Authority to put in place Legal Aid Centers attached to the Juvenile Justice Board (s) in the State capitals where there is a high pendency.

The petition outlined a detailed study in twelve states of India that is Punjab, Bihar, Orissa, Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Maharashtra, Manipur, Gujarat, Karnataka, and Uttaranchal. Also there were complaints that in many districts Child Welfare Committees were not operational or functional and even Juvenile Justice Boards had not been constituted in the manner provided in the Act. The petition had been filed seeking issue of appropriate directions to the Central Government as also to the Chief Secretaries and Director Generals of Police and other authorities of the respondent States to implement the Juvenile Justice (Care and Protection of Children) Act, 2000. The petition also highlighted the provisions of the Act which have not been implemented despite number of years having elapsed in the process.

The following guidelines were issued:

Guidelines for Legal Services in Juvenile Justice Institutions

⁴⁸ Annexure D

⁴⁹ Sampurna Behrua v. Union of India (2011) 9 SCC 801.

1. When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer, juvenile and his/her family/parents should be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.
2. JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.
3. Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.
4. Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.
5. Juvenile Justice Board should make sure that not a single juvenile's case goes without having a legal aid counsel.
6. Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.
7. In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.
8. Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.
9. Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.
10. Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.
11. If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.
12. Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.

13. Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with State Legal Services Authority.
14. Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.
15. Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.
16. Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.
17. Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.
18. Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.
19. Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

2. THE MONITORING SYSTEM

The monitoring of juvenile justice is looked after by a plethora of authorities. From The Ministry of Women and Child Development to the National Legal Services authority, there are various authorities directly or indirectly related to the matter of Juvenile Justice.

The authorities for provision of legal services:

Monitoring system of Legal Aid refers to the authorities who are assigned the job to supervise and to ensure implementation of the Legal Aid Services Authorities Act. These authorities are also liable to monitor and access the work done by legal aid officers and advocates and ensure that quality legal aid is provided to all.

In order to achieve the objective enshrined in Article 39-A of the Constitution, Government had, with the object of providing free legal aid, by a Resolution appointed a Committee for implementing Legal Aid Scheme to monitor and implement Legal Aid Programs on a uniform basis in all States and Union Territories. The said Committee evolved a model scheme which was accordingly implemented by the Government. But on review, certain deficiencies were found and it was considered desirable to constitute statutory legal authorities at National, State and district levels so as to provide effective monitoring of Legal Aid Programs.

Constitution⁵⁰ 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. With the object of providing free legal aid, Government had, by Resolution, appointed the “Committee for Implementing Legal Aid Schemes” (CILAS) under the Chairmanship of Mr. Justice P.N. Bhagwati (as he then was) to monitor and implement Legal Aid Programs on a uniform basis in all the States and Union territories CILAS evolved a model scheme for Legal Aid Program applicable throughout the country by which several Legal Aid and Advice Boards have been set up in the States and Union territories, cilas in funded wholly by grants from the central Government.

The Legal Aid Services Authorities Act 1987 prescribes Legal Aid Services Authorities.

1. National Legal Services Authority

The National Legal Services Authority (NALSA) has been constituted under the Legal Services Authorities Act, 1987 to provide free Legal Services to the weaker sections of the society. The Chief Justice of India is the Patron-in-Chief and the Senior most Hon'ble Judge, Supreme Court of India is the Executive Chairman of the Authority. NALSA works in close coordination with the various State Legal Services Authorities, District Legal Services Authorities and other agencies for a regular exchange of relevant information, monitoring and updating on the implementation

⁵⁰ Article 39-A

and progress of the various schemes in vogue and fostering a strategic and coordinated approach to ensure smooth and streamlined functioning of the various agencies and stakeholders.⁵¹

According to the act⁵², functions of the NALSA as the Central Authority are –

According to Section 4 of the said Act, the Central Authority shall perform all or any of the following functions, namely:-

- Utilize the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- Organize legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society and children as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
- Monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;
- Co-ordinate and monitor the functioning of (State Authorities, District Authorities, Supreme Court Legal Services Committee, High court Legal Services Committees, Tuluk Legal Services Committees and voluntary social service institutions) and other legal services organizations and give general directions for the proper implementations of the legal services programmes.

The National Legal Services Authority is the topmost monitoring authority. When it comes to juvenile justice and legal aid to juveniles, both in conflict with law and in need of care and protection, legal services provided are not up to the mark. The services lack quality and additionally the fact remains that there is no child friendly

⁵¹ <https://nalsa.gov.in/content/introduction>

⁵² Legal Aid Services Authorities Act 1987

environment which makes it even more difficult for the juvenile to get legal aid and find justice.⁵³

2. Delhi State Legal Services Authority

This is the state level legal aid authority established under the Legal Services Authorities Act, 1987. It is the authority accountable for providing legal aid to those who are entitled to the same in the state of Delhi.

Under Section 7 of the said Act⁵⁴, the Functions of the **State Authority** are prescribed which are as follows-

- It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.
- Without prejudice to the generality of the functions referred to in sub-section (1), the State Authority shall perform all or any of the following functions, namely:
 - give legal services to persons who satisfy the criteria laid down under this Act;

As described, it is monitored by the National Legal Services Authority which acts as a supervising authority to DSLSA. The responsibility of the DSLSA is to provide legal aid as well as to report to the NLSA. The ground study shows that there is not much check on the panel lawyers that should be exercised and due to informal reporting by lawyer to DSLSA and DSLSA being the monitoring mechanism for the lawyers, there can be high levels of manipulation which may lead to poor quality of legal aid and lack in providing adequate legal services to those who are entitled. The lack of child friendly environment is evident from the fact that no professional counselor is sent along with the lawyers. This may lead to less comfortable communication by the children to the lawyers.⁵⁵

3. District Legal Services Authority

These are the district level legal aid authorities which are the first level to which an individual or juvenile in need of legal aid approaches. Since Delhi is a union territory

⁵³ Annexure A

⁵⁴ Supra 3

⁵⁵ Annexure A

and is not a complete state, that's why the Delhi State Legal Services Authority here also acts as a District Legal Services Authority.

Under Section 10 of the said Act, Functions of the **District Authority** are –

- It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.
- the District Authority may perform all or any of the following functions, namely: co-ordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District); organize Lok Adalats within the District; and perform such other functions as the State Authority may fix by regulations.

The District Legal Services Authority being at the most lower level gets its instructions from the State Authority. Since in Delhi, both the state and the district authorities are on and the same, there is no segregation of powers. Additionally, there is no check on District Authority and this leads to unaccounted working patterns. In such cases, since juveniles have the least information regarding laws and their rights and their parents/guardians are most concerned about making sure that the child gets acquitted, thus the children suffer the most.

4. All India Legal Aid Cell on Child Rights (AILAC)

AILAC is a consolidated effort of the NLSA, DSLSA and Bachpan Bachao Andolan. It is formed to realize the cherished Constitutional ideal of equality and justice to child sine qua non of creation of a Child Friendly Society where every child has access to physical, social, psychological, moral & spiritual development. . In view of urgent need for initiating legal action with regard to prosecution and punishment of the violators of the children related law and to uphold all child rights including access to rehabilitation and other social integration schemes for the children, this legal aid cell is envisaged as a one-point stop.⁵⁶ Since it is in collaboration with Nobel laureate Kailash Satyarthi's organization, Bachpan Bachao Andolan, it is more focused on the well being of children and puts greater emphasis on juvenile justice and legal aid to

⁵⁶ <http://www.legalaidcell.in/aboutus.php>

juveniles. The AILAC reports to NLSA and DSLSA. Emphasis is not only laid on justice but also on counseling and rehabilitation. But the visit at AILAC shows that there is no mandate to regularly report to the DSLSA and NALSA. If even reports are sent then these reports are generally informal in nature which leads to manipulation. There, in all the authorities including AILAC, no provision for suo-moto cognizance. Legal aid is provided to only those juveniles who come to seek help. Monitoring is indeed poor and needs to be worked upon.⁵⁷

Apart from these authorities there are various authorities who look after the rights of children and help in their implementation.

5. Childline India Foundation

The CHILDLINE India is a project of the Women and Child Development. It is an NGO that works to help children in distress through a telephone helpline. Their toll free number 1098 is available throughout India. Their focus mainly is on 'children in need of care and protection' like victims of child labor, child abuse, sexual abuse, rape, substance abuse etc; children who require medical assistance, emotional guidance and support; children who live in conflict areas or disaster hit areas etc.

CHILDLINE was founded by Ms. Jeroo Billimoria, who was then a professor at the Tata Institute of Social Science (TISS), Mumbai. Initiated in June 1996 as an experimental project of the department of Family and Child Welfare of TISS, CHILDLINE has come a long way today, to becoming a nationwide emergency helpline for children in distress.⁵⁸

The CHILDLINE service is available to children in 412 cities/districts across 35 States/UT in India, through a well-integrated network of 674 partner organizations (as on March 31, 2017). CHILDLINE 1098 talks to children in need of care and protection and offers comfort to children in distress. CHILDLINE service not only plays the role of listening to the child but also aids in strengthening and molding existing national child protection mechanisms.⁵⁹

⁵⁷ Annexure B

⁵⁸ <http://www.childlineindia.org.in/1098/history.htm>.

⁵⁹ Annual Report 2016-2017, Childline India Foundation, pg 40.

During the year 2016-17, Childline received a total of 1,32,66,051 calls from children and concerned adults.

Our visit to Childline opened our eyes to the fact that there are still various connected authorities who lack capacity building and have reduced to mere awareness camp organizers. All observation homes and child care institutions across India have been covered by Childline and there is an immense lack of a proper system. Even facilities of legal aid are a distant dream for many and availing such a facility is not as easy as it should be⁶⁰.

6. National commission for protection of child rights (NCPCR)

The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, an Act of Parliament (December 2005). National Commission for Protection of Child Rights (NCPCR) is a statutory body under the Commissions for Protection of Child Rights (CPCR) Act, 2005 under the administrative control of the Ministry of Women & Child Development, Government of India. The Commission's Mandate is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Child is defined as a person in the 0 to 18 years age group.

The Commission visualizes a rights-based perspective flowing into National Policies and Programmes, along with nuanced responses at the State, District and Block levels, taking care of specificities and strengths of each region. In order to touch every child, it seeks a deeper penetration to communities and households and expects that the ground experiences gathered at the field are taken into consideration by all the authorities at the higher level. Thus the Commission sees an indispensable role for the State, sound institution-building processes, respect for decentralization at the local bodies and community level and larger societal concern for children and their well-being.⁶¹

⁶⁰ Annexure C

⁶¹ <http://ncpcr.gov.in/>.

7. Delhi commission for protection of child rights (DCPCR)

The Delhi Commission for Protection of Child Rights (DCPCR) has been constituted under the Commission for Protection of Child Rights (CPCR) Act, 2005 vide a notification issued by the Govt. of NCT of Delhi on 7 July, 2008. It has six members and a Chairperson. The Commission started functioning from 8 September, 2008. The office of the Commission is at 5th Floor, ISBT Building, Kashmere Gate, Delhi-110006.

The Act empowers the Commission to act as a Civil Court to undertake suo-motu enquiry and also look into complaints related to deprivation and violation of child rights and non-implementation of laws for protection and development of children. The Commission is mandated to intervene in matters where-ever there is a failure to implement policies, decisions, guidelines or instructions as per the perspective of the rights of a child enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The Commission is actively and effectively monitoring rescue & rehabilitation of child labour specially involving migrant children, cases falling under Right to Education, medical crisis in schools, children's right to play in parks, promotion of adoption of girl child, prevention of sexual abuse of children, checking child trafficking, children in need of care and protection etc. Sh. Ramesh Negi is currently the Chairperson of The Delhi Commission for Protection of Child Rights.⁶²

Functions of the commission -

- To suggest Legal Safeguards for Protection of Child Rights and recommend Measures
- Enquire into Violations of Child Rights and initiation of proceedings
- Examine Rights of Children affected by Terrorism, Violence, Disaster, HIV/AIDS, Trafficking, Mal-treatment, Exploitation, Pornography & Prostitution, recommend remedial Measures

⁶² http://delhi.gov.in/wps/wcm/connect/doi_t_dcpcr/DCPCR/Home/.

- Look into matters of children in need of Care & Protection, Distressed, Marginalized, Disadvantaged, Juveniles in conflict with Law, Children without family and Children of Prisoners for appropriate remedial Measures
- Review of Treaties, International Instruments, Govt. Policy, Programme & Activities in the best interest of Children
- Research, Literacy & Awareness of Child Rights & Safeguards through Media, Publication, Seminars etc.
- Inspection of Juvenile/Children, Residential Institutions for proper Care, Treatment Reformation and Protection
- Monitor implementation of Right to Education
- To monitor the cases of rescuing & rehabilitation of Child Labour
- To spread awareness about Child Rights and related issues through seminars, workshop, publications, media etc. and promote awareness of safeguards available against abuse of Child Rights.
- To enquire into complaints and take suo motu notice of matters related to:
 - A. Deprivation and violation of Child Rights;
 - B. Non-implementation of laws providing for protection and development of children;
 - C. Non-compliance of policy decisions, guidelines or instruction aimed at mitigating hardships to and ensuring the welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities;
- Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

The Commission has all powers of the Civil Court with respect to the following matters:

- Summoning and enforcing the attendance of any person from any part of India and examining him/her on oath;
- Receiving evidence on Affidavits;
- Requisitioning of any Public Record or copy thereof from any Court of Office.
- Issuing commissions for the examination of witnesses or documents;
- Forwarding cases to Magistrates who have jurisdiction to try the same;
- On completion of inquiry, the Commission has the powers to take the following actions:
 - A. To recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry;
 - B. To approach the Supreme Court or the Delhi High Court for such directions, orders or writs as that Court may deem necessary;
 - C. To recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary

The DCPCR is a right-implementing, monitoring and supervising authority and works in association with authorities like the WCD (Ministry of Women and Child Development) which is the parent and the implementation body and other authorities like Childline, DSLSA, governing bodies of special homes, observation homes, place of safety and child care institutions etc.

Its work involves reporting about the child to Childline, police station and referring the case to the CWC (Child Welfare Committee) finally. The case has to be dealt within 24 hours by the commission and no case taken cognizance of shall lie around more than that time period.

The commission pays regular visits to observation homes and special homes to keep a check. It also seeks help from legal aid officers provided by DSLSA when required in a



particular case. According to their own recommendations made for observation homes etc., these homes are overcrowded which hamper the implementation process⁶³.

⁶³ Annexure D

CHAPTER 4

REHABILITATION AND FOLLOW UP

Rehabilitating a prisoner refers to preparing him or her for a productive life upon release from prison.⁶⁴ Rehabilitation broadly refers to the process of restoring the rights of a person and his reintegration into the society. In cases of juveniles, if a juvenile is in conflict in law, then rehabilitation would refer to the inculcation of moral values in him, the creation of a sense of responsibility in him so that he is able to access and understand the consequences of his act and can restrain from doing such acts in future. For those juveniles who were in need of care and protection, rehabilitation would mean their counseling by a trained and professional psychiatrist who can get him out from the trauma he had suffered. In both the cases, skill development, education for a brighter future and their reintegration unto society is a common feature.

Follow Up refers to the act performed by the authorities once the child leaves the care and observation centre by which they intend to monitor the progress of the individual when he goes back to the social setup. It also acts as a supervising process by which the well being of the now independent is ensured and it is made sure that the child does not indulge in any of the wrongful acts.

In Indian Juvenile Justice System, there are policies and child care as well as observation homes to look after the process of rehabilitation. But, the ground studies⁶⁵ reveal that there is no set mechanism for follow up of the juveniles.

Observation Homes

In Delhi there are three Observation Homes (two for boys and one for girls), one special Home and one place of safety. Observation Homes are meant for the temporary reception of juveniles on pendency while juveniles are sent to special homes as a dispositional order for their 'ultimate rehabilitation'. Some of the special homes, observation homes and place of safety in Delhi are:-

⁶⁴ West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc.

⁶⁵ Annexure B

1. Observation Home for Boy -I, Prayas Behind Ambedkar Stadium Delhi Gate, New Delhi.
2. Adharshila Observation Home for Boys -II, Sewa Kutir Complex, Kingsway Camp, Delhi.
3. Place of Safety, 1, Magzine Road, Delhi.

Prayas

Prayas is a humanitarian, gender-sensitive and child-focused development organization with a vision to restore the lost childhood of children in need of care, protection and development. Prayas works to ensure that children have a bright future. It is dedicated to changing the lives of needy children. Prayas Juvenile Aid Centre Society, is a national level humanitarian, gender sensitive and child focused development organization. Among over 50 Projects, Prayas operates 242 centres with more than 700 professionals including 47 Homes/Shelters for children, 53 Vocational Training Centers, across the country in 09 States/UTs directly serving about 50,000 marginalized children, youth and women addressing multiple issues and initiating programs relating to child protection and juvenile justice, trafficking of children and women, vocational and life skills training, empowerment of women through Self-Help Groups and Income Generation Programmes, promotion of entrepreneurship, facilitating credit through bank linkages and also direct micro finance operations.⁶⁶

⁶⁶ <http://www.prayaschildren.org/about.html>.

RECOMMENDATIONS AND CONCLUSION

In our study we not only did extensive research on the Juvenile Justice Act and its implications but also did field studies to collect primary data through interviews at places we visited. This study accomplishes to focus not only on the monitoring authorities but also the juveniles themselves, their families and civil societies etc.

Though on the face of it, all rights seem to be well implemented, the conditions of juvenile homes also look impressive, but all of these from a distance. There are various policy recommendations that should be made at this juncture where we have had made various observations after visiting the various authorities:

Policy Recommendations:

- 1. Capacity-Building:** In an institutional sense, capacity building is one of the most used terms. It's not a goal in itself but it is integral in making an impact. Most authorities and institutions lack optimization of skills and hence require capacity building. In most authoritative bodies like DSLSA, DCPCR AILAC (as visited) there is a lack of capacity building.
- 2. Better provision of legal services:** The authorities responsible for the provision of legal services lack when it comes to the implementation process. There is no mandatory provision of reporting to the parent authority. For eg. Not all legal aid officers are reporting their work to the District and State Legal Services Authority, and these authorities are not necessarily reporting to NALSA. Authorities like AILAC and DCPCR also lag behind in this aspect.
- 3. Quality of legal aid officers:** Not all private lawyers take up pro-bono cases and hence it is imperative that emoluments for government legal aid officers are increased to attract quality lawyers. There is an immediate need of quality legal aid officers; this need is also felt by commissions like the DCPCR. Lack of quality legal aid will completely defeat the purpose of providing legal advice and services. This is not a choice in the hands of those who require legal aid. If they could afford someone of

their choice, they would have, but a provision to help such people shall not compromise on quality.

- 4. Regular interactive sessions:** Both children in observation homes and in child care institutions require frequent interactive and fun sessions where there can be open discussions. This in fact should not be limited to the kids but also shall be extended to their families/guardians and even the officers.
- 5. More counseling sessions:** Psychologists and counselors should be present in the observation and special homes and child care institutions 24*7 for constant support and guidance. In fact legal aid officers and probationary officers shall be accompanied by them.
- 6. Infrastructure and manpower:** Most of the observation homes and child care institutions are overcrowded and hence require better infrastructure and more increased manpower.
- 7. Rehabilitation and Re-assimilation into the society:** Juvenile offenders who're kept in observation homes, special homes and places of safety are sent for the purpose of restoration to conditions prior to the offence so as to take the crime out of their mind by working on the child's psychology and counseling him. These homes should not be reduced to '*bacha jails*'. Focus should also be laid on preparing children to assimilate into the society again.
- 8. Setting up of follow-up institutions:** There is absolutely no mechanism for follow-up in the juvenile justice system. Once the child is freed from the observation home or comes out of the child care institution there is no follow-up taken so as to ensure that the child is living well in protected conditions and is not indulging in any criminal activities. A robust follow-up mechanism will help immensely in curbing the problem of 'repeating offenders'.

Conclusion



The Juvenile Justice system in India is in a very confusing state. The juvenile justice system is highly influenced because of a non-child friendly environment. The JJA is considered a watershed in the history of child legislations in India. Like its international predecessors (Convention on Rights of Child, Beijing Rules, Riyadh Guidelines), the JJA stresses on the importance of the rehabilitation of Juveniles in Conflict with Law(JICL) in a manner so as to promote their 'dignity and self worth'. The implementation of the Act has suffered from severe infrastructural bottlenecks, which debilitated the delivery mechanism of the entire system. Initiatives which were taken to improve the system happened sporadically and did not sustain for long. There is a need to delineate the roles of different departments-education, labor, health, law and ensure that the channels of rehabilitation are well defined and well established. The different departments should then work in tandem to provide for the holistic rehabilitation of these children. There is also a requirement for a proper monitoring mechanism in place to assess the effectiveness of the rehabilitation of these children. However the biggest stumbling block still remains the attitudes of the Juvenile Justice functionaries. One could have the entire infrastructure in place, but things can change for the better, only with the cooperation and sensitisation of the people involved.⁶⁷ And more over, the conditions of legal aid for juveniles are far more disturbing. Legal aid to most children in need is inaccessible. Laws are made, policies are framed but nothing works due to lack of implementation.

The need of the hour is to raise sensitization on child issues and to make sure that help reaches them at the earliest. It is important to ensure effective implementation of laws and to make legal aid available to the juveniles so that they don't remain left out in this fight for justice.

⁶⁷ https://www.ccs.in/internship_papers/2010/meghna-dasgupta_rehabilitation-through-education-for-juveniles.pdf.

ANNEXURES

ANNEXURE A

VISIT TO DELHI STATE LEGAL SERVICES AUTHORITY (DSLSA)

DATE: 6TH JUNE 2018

TIME: 11:30-1:30

The first day of the field visit, we visited the Delhi State Legal Services Authority located at Patiala House Court Complex, New Delhi.

Delhi State Legal Services Authority aims to provide legal aid to the needy, as prescribed by the Legal Services Authorities Act, 1987 in the state of Delhi.

The visit was intended to gain some valuable information and knowledge regarding the working of the DSLSA along with some insight on the control mechanism. Our discussion had to be centered to the topic of Juveniles and legal aid provided to them.

In the same course of action, we met an official at DSLSA. He was short on time and thus was not able to converse for a longer duration. But, for the time he conversed, we got a useful insight into DSLSA as an organization. The following **information** was gathered:-

1. Regarding the working process, he informed that the organization works as according to the procedure mentioned in the Juvenile Justice (Care and Protection of Child Act) 2015. There is little or no deviation from the procedures mentioned in the Act.
2. As the answer to the question of Juvenile Justice Boards, he informed us that there are 6 JJBs centered at various locations in Delhi. These JJBs have panel advocates as well.
3. Further enlightening us, he told that the lawyers to the case report to the JJBs while JJBs are supposed to send reports to the DSLSA regularly but these reports are generally informal.

4. When asked regarding the monitoring and controlling mechanism, we were informed that to every case, a lead lawyer is appointed who visits the court on all dates along with the counsel to the case and supervises him. This is done to make a check on the working of the counsel representing the juvenile.
5. Related to the rehabilitation of juveniles in conflict with law, the additional secretary told us that various programs are initiated for rehabilitation of juveniles and for their re-assimilation to society. In the same course of action, observation, rehabilitation and child care homes are established at various places in Delhi. They take up not only cases of juveniles in conflict with law but cater to juveniles in need of care and protection as well.
6. When asked about the concept of counselors and do counselors accompany lawyers when going to meet children, he said that the lawyers are trained as such that they are able to deal with children, both in need of care and protection and in conflict with law. Thus, they don't need to be accompanied by counselors since they themselves are well equipped.

From the above conversation and information, the **observations** drawn are:-

1. There is no check on the knowledge of the advocates in panel and the quality of advocacy they provide to the juvenile client.
2. Since the reporting by the JJBs is informal, there is scope of manipulation and there, it means, is no regular and constant check on the working of the Juvenile Justice Boards.
3. Since the lead lawyers are also a part of the JJB itself, it may happen that it does not provide with accurate and required check. Also, no separate board for monitoring further makes the controlling mechanism weak and incompetent.
4. There is no set mechanism and procedure related to regular visits by the people at DSLSA to the observation, rehabilitation and child care homes which may lead to less check on them causing improper working of these centres and homes.
5. Despite of the fact that the counsels to juveniles are well trained and equipped with the skills necessary to deal with the juvenile, still the counselors are more knowledgeable and learned regarding child psychology and thus, ignorance of

this fact shown in lone visits of counsel to juvenile brings to light a big loophole to the working of the DSLSA.

Conclusion drawn here was that since it is a government organization, he did not seem willing enough to answer all our questions. He tried to dodge some while answers to some questions have brought to light certain lacunas in the system which we intend to investigate in detail in our future visits.

ANNEXURE B

VISIT TO ALL INDIA LEGAL AID CELL ON CHILD RIGHTS

Place of visit: All India Legal Aid Cell On Child Rights, at Bachpan Bachao Andolan's office, J-105, Kalkaji, New Delhi

Time: 10:30-12:30

We visited the AILAC which works from the central office of Bachpan Bachao Andolan at Kalkaji in order to gain an insight into the working of the AILAC to further our knowledge regarding Juvenile Justice and Legal Aid in India.

We reached the office at around 11:20 a.m. and were asked to meet an officer at the reception. She followed through and asked us to wait so she could ask someone to come and attend to us.

We were made to converse with one of the officers working there. She spared the little time she had to answer our queries and talk to us.

Information gathered based on our questions:

1. The AILAC focuses on cases related to POCSO, Juvenile Justice Act, Rape cases, bonded labor etc.
2. The AILAC reports to the DSLSA and NALSA and regularly visit courts.
3. In grave offences like rape which have a traumatizing effect on the child the AILAC along with the DSLSA and/or NALSA provides for a counselor as the child might not be comfortable talking to the officer directly.
4. AILAC works from the office of Bachpan Bachao Andolan, however, it remains a government body and functions accordingly, there are no special steps taken by Bachpan Bachao Andolan unless government mandates it to do something.
5. The AILAC along with Bachpan Bachao Andolan works to rehabilitate, counsel, skill and try to reassimilate these children back in the society.

6. To achieve the above-mentioned goals they take the help of counselors, children are kept at Bal Ashram in Jaipur or their child care home in Buradi.
7. Legal aid is provided to any child that approaches AILAC, economic background is not taken into account.
8. That there is a monitoring board to keep a check on AILAC's functions.
9. In the end, she acquainted us with one of the cases she's currently working on a case where a child rescued by the Bachpan Bachao Andolan foundation was provided legal aid by the AILAC. The child mentioned was a girl who was a child labor and was confined wrongfully by the Noida police. The child was handed over to the parents and the Noida Legal Services Authority was informed of the same. The police official who confined the child is being tried for the same.

Observations made:

1. Though we were informed that the AILAC visits courts daily, however we managed to meet a lawyer in the office itself, apart from her one more lawyer was present at the office.
2. There is no mandate to regularly report to the DSLSA and NALSA, and according to the information gathered at the DSLSA, the reports are generally informal, if any. However, the AILAC lawyer stressed on regular reports being sent to the DSLSA.
3. On being asked if officials of DSLSA paid frequent visits to the AILAC which is also AILAC'S nodal agency, the legal aid officer was a little hesitant and answered that they themselves visited the courts everyday so there wasn't basically any need.
4. To avail legal aid, mostly victims themselves have to approach the AILAC, rather than they approaching victims.
5. No concept of a lead lawyer could be found from the legal aid officer's perspective as was informed to us by the DSLSA Authorities.
6. The legal aid officer informed us about a board for monitoring; however, no such information was retrieved from DSLSA.

7. Not many case studies could be extracted from them.
8. Less emphasis on providing counseling as it was mostly limited to 'grave' offences and based on government intervention.
9. No follow up-mechanism after trial relating to the condition of the child in conflict with law or in need of care and protection.
10. No set mechanism to ensure that no violence against the children occur in observation and child care homes apart from a trial mechanism which takes place only after the violence has taken place.

Conclusion:

After our visit to the DSLSA and AILAC we found that they were not able to provide us with sufficient information to base our study on. Though we gained valuable information, it isn't enough to substantiate our findings. Many lacunas were found in the system which leads us to take our field study further.

ANNEXURE C

VISIT TO CHILDLINE INDIA FOUNDATION

PLACE OF VISIT: Childline India Foundation, SPWD Building, Vishnu Digambar Marg, Rouse Avenue

DATE: 11th June

TIME: 12:30-1:30

We visited the Childline India foundation's office located inside the SPWD building, Vishnu Digambar Marg, Rouse Avenue and met with one of the officials in order to get more insight into the 'role of institutions like Childline in protection of children'. We also put forth questions related to legal aid etc. in order to better our current study centered on 'Juvenile Justice and Legal Aid'.

We were first of all handed over a sheet of statistics of the number of calls received by Childline in the preceding year. Based on these logistics we based a few of our further questions as well.

Information gathered:

1. Childline has covered all Child care units and visited special homes in their dealings with children.
2. They have observed that there remain many districts where child care units are still not present and there are a greater number of such institutions of those present which need to meet the minimum standards necessary for proper functioning.
3. There is a lack of a proper system when it comes to the working of special homes and child welfare institutions.
4. We were also informed about the provision of 'Child Protection Units' in every district in the Juvenile Justice (Care And Protection Of Children), 2015.
5. On the role of police, he shared his personal opinion and called for greater capacity building and better administrative control in the police department

6. Since Childline works very closely with the police, he was able to provide us with the greater loopholes that exist in the system and also pointed out that we must also focus on the problems faced by police itself which hamper them to function well.
7. Regarding the role of DSLSA (Delhi State Legal Services Authority) and AILAC (All India Legal Aid Cell For Child Rights), he again called for greater capacity building and better administrative control.
8. He added that authorities at DSLSA are mere camp organizers and lack the zeal and dedication to accomplish their mission. Thus, there is lack of delivery of easy legal aid and justice.
9. He further said that in reality, legal aid remains difficult to obtain not just because there is lack of awareness but because authorities are at fault.
10. He informed us that during 2009, when authorities observed a failure of the JJ Act then, an Integrated Child Protection Scheme came into picture which was aimed at implementation of the JJ Act.
11. Therefore in 2009, a greater emphasis was laid on Public Private Partnership, increasing public participation and taking a holistic approach.
12. Regarding rehabilitation and follow up, they told us that once the child is handed over to his/her parents or concerned authority, limited follow up is maintained because detailed follow up on every case is not feasible. Moreover, Childline remains a rescuing authority only.
13. Abuse at special homes can be reported to Childline but is further referred to concerned authorities like NCPCR and CPR.
14. Referring to the statistical data sheet, it was found that the least calls that were made in the case of 'Children in Conflict with Law' and those were also mostly concerned with the cases where the victim was the child himself and he reported the crime. Rarely did the families reported of the juvenile offenders. Even lesser were the cases where they demanded legal aid.

OBSERVATIONS :-

1. Child Care homes, shelter homes as well as Special and Rehabilitation homes were not able to maintain the minimum standards of living and hygiene. They lack proper support system and require improvement.
2. The concerned authorities like DSLSA, AILAC and Police lack capacity building and child friendly environment. Also, sensitization towards the issues of children cannot be found in the authorities and its staff members.
3. Due to lethargic attitude of authorities, there is a miscarriage of justice.
4. Despite awareness programs and public partnership, still less number of cases, especially concerning children in conflict with law are reported.
5. What all the DSLSA and AILAC tried to cover up, today's findings show that things there are all not in place perfectly.
6. Legal aid still remains a farfetched dream for many in dire need since the authorities lack the will to implement it at any cost.

CONCLUSION:

Today's fruitful session lifted off the veil that the authorities cover themselves with. We made various observations and our next focus should be to have a first-hand experience of the child welfare homes and special homes which have been mentioned to lack the minimum standards of living as well as the police and the child welfare officers who must be held responsible for not creating a child friendly environment.

ANNEXURE D

Visit To Delhi Commission For Protection Of Child Rights

Date: 20th June, 2018

Time: 11:30 a.m. - 3:30 p.m.

Place: DCPCR Office, 5th floor, ISBT Building, Kashmere Gate

We visited the office of Delhi Commission for Protection of Child Rights located in the ISBT building in Kashmere Gate. We reached there at 12 noon. There, we had gone to meet either the Chairperson or any other member. Since, no one was available to have a word with us, we had to wait for about 1 hour and 30 minutes when, at 2 pm, one of the officials got free and was able to talk to us.

She talked to us for around half an hour and we had a very fruitful discussion with her.

Information gathered:

1. DCPCR is a right implementating, monitoring, and supervising authority.
2. It works in association with authorities like the WCD (Ministry of Women and Child Development) which is the parent and the implementation body and other authorities like Childline, DSLSA, governing bodies of special homes, observation homes, place of safety and child care institutions etc.
3. Other authorities submit reports to the commission (not regularly).
4. Its work involves reporting about the child to Childline, police station and referring the case to the CWC (Child Welfare Committee) finally.
5. The case has to be dealt within 24 hours by the commission and no case taken cognizance of shall lie around more than that time period.
6. There are 2 kinds of shelter homes, the closed and the open ones. The open ones are temporary and hence it becomes difficult to keep a constant check.
7. Observation homes by and large are hygienic and all facilities are provided, however, they are overcrowded.
8. The food, health and hygiene conditions are well-maintained as JJB resides at the observation homes.

9. Regular visits by the members of commission are made.
10. The commission seeks help from legal aid lawyers provided by DSLSA at times when needed.
11. However, the work of legal aid officers has reduced to making a nexus for money making.
12. They also have their own legal counsel for help.
13. It is difficult to penetrate an observation or special home as there is a heavy presence of authorities, police, legal aid officers, counselors etc.
14. The commission supervises the trainings of the staff of DSLSA and Childline.

Observations:

1. The commission lacks in the area of accountability. The provision for submission of reports by other authorities is still not mandatory and no record is maintained.
2. Health and Hygiene conditions are easily checked at places where the JJB resides like Kingsway Camp, Seva Kutir and Prayas. However, small child care institutions where 'child in need of care and protection are present' it is difficult to check the quality of the living conditions as the reach of authorities is far less.
3. The commission considerably lacks the quantity of legal counsels and advisors. (There is only one)
4. This leads them to seeking help from legal aid officers provided by DSLSA, where the quality of such counsels is in question.
5. The huge problem of overcrowding of homes was enlarged. There is a need of more empowering infrastructure and manpower.
6. Despite shelter homes and child care institutions being established a large number of kids do not wish to go there. The reason mainly is lack of awareness especially among their families.

