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Critical Analysis of Working of Courts under Juvenile Justice Act

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ABSTRACT

The below article aims to give an insight on the present juvenile system through various case laws which have been relied upon by our judicial system. In the last few decades, the crime rate by the children under the age of 16 years has increased. The reason for the increasing crime rate may be due to several factors. The laws need to be evolve as per the time. As some laws become obsolete with time those laws need to be struck down and new laws have to be made. With change in time the crime rate in the country has increased. One of the most frightful incident of "Nirbhaya Delhi Gang Rape Case" which shook the whole country with its brutality, was the reason the Indian Parliament introduced a new law and thus, Indian Parliament came up with a new law which is known as "The Juvenile Justice (Care and Protection of Children) Act, 2015". Which has ever since put a stop on children between the age group of 16-18 who commit heinous crimes to get away in the shadow of juvenility. This article aims to analyse the working of courts after this act was passed. As the best way to analyse the working of the our system is through the landmark judgements which have been passed in the recent years. The article aims to provide a complete review of the previous and existing systems of juvenile delinquency.

KEYWORDS

Juvenile, Delinquency, Justice, Reforms, Crime.

INTRODUCTION

The Courts in such situations act as a 'parens patria' because

they have a kind of guardianship over minors who from their legal disability stand in need of protection. The working of court under juvenile justice act can be determined through the legal precedents which have come over the years. These are the legal precedents which are relied on further give the best judgements on any question of law. As it helps clarify the position of the certain issue. Hence the best method to do an analysis of the working of courts, it can be best done through case studies.

CASE STUDY 1

Exploitation of Children in Orphanage in the State of Tamil Nadu v. Union of India

The case, registered as public interest litigation in 2007, made its way to the courts on the basis of a letter and 2007 article alleging systematic sexual abuse of children in NGO and state-run institutions in Mahabalipuram (Tamil Nadu) including allegations of foreign and Indian tourists receiving sexual services from 58 children either over the telephone or at orphanages and of the sexual abuse of girls in schools.

On 5th May, 2017, the Supreme Court of India issued significant directives to government in India in this case. The decade old case highlighted a number of all too familiar and disturbing trends—sexual abuse and exploitation of children and the lack of proper documentation and available data on children living in residential care institution.

In the above case, the following directives were issued by the court:

- The definition of the expression “child in need of care and protection” under Section 2(14) of the JJ Act should not be interpreted as an exhaustive definition. The definition is illustrative and the benefits envisaged for children in need of care and protection should be extended to all such children in fact requiring state care and protection.
- The Union Government and the governments of all States and Union Territories must ensure that the process of registration of all child care institutions is completed positively by 31st December, 2017 with the entire data being confirmed and validated and the information shall be available with all the concerned officials. The registration process should also include a data base of all children in need of care and protection which should be updated every month. While maintaining the same, issues of confidentiality and privacy must be kept in mind by the concerned authorities.

- The State Governments and Union Territories should draw up plans for full and proper utilisation of grants (along with expenditure statements) given by the Union Government under the Integrated Child Protection Scheme. Returning the grants as unspent or casual utilization of the grants will not ensure anybody's benefit and is effectively wasteful expenditure.
- It is imperative that the Union Government and the State Governments and Union Territories must concentrate on rehabilitation and social re-integration of children in need of care and protection such as skill development, vocational training, etc. which must be taken advantage of keeping in mind the need to rehabilitate such children.
- The State Governments and Union Territories are directed to set up Inspection Committees as required by the JJ Act and the Model Rules to conduct regular inspections so that the living conditions of children in these institutions undergo positive changes.
- The preparation of individual child care plans is extremely important and all governments of the States and Union Territories must ensure that there is a child care plan for every child in each child care institutions. It is a continuing process which must be initiated immediately.
- Wherever the State Commission for Protection of Child Rights has not been established or though established is not fully functional in the absence of a Chairperson or any one or more members, the State Governments and Union Territories must ensure that all vacancies are filled up with dedicated persons on or before 31st December, 2017. The SCPCRs so constituted must publish an Annual Report so that everyone is aware of their activities and can contribute individually or collectively for the benefit of children in need of care and protection.
- The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academics that can take up this task including police academics and judicial academics in the States. There are also national level bodies that can assist in the process of training including bodies like the Bureau of Police Research and Training, the National Judicial Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest.
- It is time that the governments of the States and Union Territories consider deinstitutionalization as a viable alternative. It is not necessary that every child in need of care and protection must be placed in a child care institutions. Alternatives such as adoption and foster care need to be seriously considered by the concerned authorities.

- The importance of social audits cannot be over-emphasized. The necessity of having a social audit has been felt in some statutes which have been mentioned above and also by the Controller and Auditor General of India. That being the position, it is imperative that the process of conducting a social audit must be taken up in rights earnestness by the National Commission for the Protection of Child Rights as well as by each State Commission for the Protection of Child Rights. This is perhaps the best possible method by which transparency and accountability in the management and functioning of child care institutions and other bodies under the JJ Act and Model Rules can be monitored and supervised.
- We acknowledge the contribution made by Ms. Aparna Bhatt in taking keen interest in the issues raised in this PIL and for rendering effective awareness to this Court at all times. The Supreme Court Legal Services Committee will give an honorarium of Rs. 2 lakh to Mr. Aparna Bhatt out of the funds available for juvenile justice issues.
- While there may be some other issues specifically concerning children in need of care and protection, we leave these issues open for consideration and grant liberty to the learned Amicus to move an appropriate application in this regard including any application for modification or clarification of the directions given above.
- The Union of India is directed to communicate our directions to the concerned Ministry or Department of each State and Union Territory for implementation and to collate necessary information regarding the implementation of these directions with the assistance of the National Commission for the Protection of Child Rights and the State Commission for the Protection of Child Rights. A status report in this regard should be filed in this Court on or before 15th January, 2018. The Registry will list this case immediately thereafter.

CASE STUDY 2

Mukarrab and Others v. State of Uttar Pradesh¹

This Court observing that there is no document from which date of birth of the appellants could be ascertained, directed ossification test to be conducted so as to ascertain the age of the appellants.

The Court said that the claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this court though not pressed before the trial

¹ Criminal Appeals Nos. 1119-20 of 2016, decided on November 30, 2016.

court and in the appeal court. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may *prima facie* satisfy the court that an inquiry into the claim of juvenility is necessary.

The doctors have examined the appellants and given their opinion as that on perusal of the documents, it was revealed that the year of commission of crime was 1994. The accused has submitted the documentary proof of his age stating date of birth to be 1-7-1978 and date of birth as 5-2-1979 respectively. Therefore, at the time of commission of the offence in 1994, the appellants would have been only aged about 15 years and the benefit of the JJ Act to be extended to the appellants.

Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year which would then bring him to be 17 years and 2 months old a juvenile. Keeping in view the above principles, the court consider the medical opinion of the Medical Board determining the age of the appellants as between 35-40 years on the date of examination, i.e. on 2-5-2016. On the basis of the age of the appellants determined between 35-40 years in May 2016, giving a variation of two years in upper age limit i.e. age of the appellants would be 38 years. The age determination based on ossification test though may be useful is not conclusive.

CASE STUDY 3

Sri Ganesh v. State of Tamil Nadu and Anr.²

In this case, the court said that the trial court took into account the documentary evidence as contemplated in the statutory provisions and returned a finding that the date of birth of the appellant was 19.10.1991. During the course of its judgment the High Court could not find such conclusion to be vitiated on any ground. In the face of the relevant documentary evidence, there could not be medical examination to ascertain the age of the appellant and as such the consequential directions passed by the High Court were completely unwarranted. Further, if the allegations of the prosecution are that the offence under Section 376 IPC was committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had

² CRIMINAL APPEAL NO. 39 OF 2017 (Arising out of SLP (Cri.) No. 9073 of 2015), decided on 6th January 2017.

occurred. The trial court was therefore justified in going by the assertion made by the victim in her cross examination and then considering whether the appellant was juvenile on that 10 4 date or not.

CASE STUDY 4

Mukesh Yadav v. Union of India and Ors.³

In this case, the court made notice that Section 21 of the Act prohibits publication of the name of the 'juvenile in conflict with law', the underlying object of the said provision being to protect a juvenile from any adverse consequences on account of the conviction for an offence, committed as a juvenile.

The court said that by keeping in mind the fact that the object of the Act is to ensure that no stigma is attached to a juvenile in conflict with law, in the court's view, once the juvenile has been extended a protective umbrella under the said enactment, there was no good reason for the respondents to have insisted that the petitioner ought to have disclosed the information relating to the allegations against him pertaining to an offence that was committed during his childhood where he was tried by the Juvenile Justice Board and was subsequently acquitted.

CASE STUDY 5

Mohan v. State⁴

Under the abovementioned case, this court concluded that the appellant had sexual intercourse with the prosecutrix. As the evidence has the overtures of consensual sexual intercourse, the age of the prosecutrix becomes relevant. In respect of ascertaining the age of a child, who is also a victim of a crime under Section 361 IPC, the age of the prosecutrix is relevant. Therefore, this court has relied on the decision of the Apex Court in **Jairnail Singh v. State of Haryana⁵**, which has been held that **Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007** is applicable for ascertaining the age of the child who is a victim of a crime. Therefore the consent of the prosecutrix, being a minor, was inconsequential. Hence the appeal was dismissed. Further, there are vestiges of non- consensual intercourse as well as enticement in the testimony of the prosecutrix. Hence, the court is of the view that this case is not a fit case for granting less than the statutory minimum as there are no adequate and special

³ W.P.(C)—6062/2017, decided on 14th December 2017.

⁴ CRL.A.-1181/2016, decided on 5th June 2017.

⁵ (2013) 7 SCC 263.

reasons for doing so.

Accordingly, having being regard to the facts and circumstances of the case and the fact that minors consent in meaningless, the court upheld the conviction and modify the order on sentence to the extent that the appellant Mohan shall undergo rigorous imprisonment for a period of seven years for the offence under Section 376 IPC. Order on payment on fine shall remain unchanged.

CASE STUDY 6

Parag Bhati (Juvenile) through Legal Guardian v. State of Uttar Pradesh and Anr.⁶

In this case the supreme court addressed the issue of proving of juvenility of the accused when the matriculation certificate cannot be relied on. And the last resort to prove the juvenility is the ossification test.

An FIR was filed at P.S. Kasana District for murder and criminal intimidation of the respondent. After which the guardian of the appellant raised objection on the juvenility of the appellant. Also in the superior court the appellant argued that an error was committed in directing ossification of the appellant. But as per the chief medical officer the estimated age of the accuse was 19 years. But there was not enough conclusive documents to prove the same. Hence in this case gave the ruling that any documentation provided in accordance with Rule 12(3)(a)(i) through (iii) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 must be treated as conclusive evidence for the date of birth of the accused. Still if there is uncertainty and the accused is presenting contradicting evidence an investigation can take place about the accused's age which can include a medical checkup.

⁶ (2016) 12 SCC 744.