

GUIDELINES OF NATIONAL LEGISLATION AND UN MECHANISMS IN CONNECTION WITH CHILDREN IN CONFLICT WITH LAW IN INDIA

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Abstract: Juvenile in conflict with law is a serious threat to our future generation in our modern society. Prevalence of delinquent activities is more common among the children in India today. But it is a global phenomenon. An occurrence of juvenile crime ever increasing in our present society due to various factors influence on children from committing to delinquent activities including poverty, illiteracy, unemployment, broken families, maltreatment of children, the influence of peer groups, and negative impacts of media, and etc. Indian civilized society with psychologically full-fledged adults gets failed in cherishing children in their moral and social life, throughout the entire world criminal justice bureaucrats feel that a dissimilar, in fact, a rights and restructuring approach based care and treatment shall be followed in the cases of juveniles in conflict with the law. The latest amendments in Juvenile Justice (Care and Protection of Children) The act which has been an attempt to special attention towards juvenile rights, necessary care, treatment, reformations, rehabilitation and also providing various provisions those who are come in children in conflict with the law.

Our constitution guarantees certain rights and remedies to the protection of life and personal liberty and the right against exploitation include children over its articles 14, 15, 15(3), 19 (1) (a), 21, 21(a), 23, 24, 39 (e), 39(f). It's also a commitment to the care, protection, safety, security, reformation, rehabilitation and well-being of its entire people, including children. This the paper also attempts to discuss on Juvenile Justice Act and UN Declaration and international instruments from the perspective of protecting the child rights the based interest of children in conflict with the law and the measures to prevent the deviant behavior among the children in society.

Index Terms- Convention, Declaration, Guidelines, Juvenile in Conflict with Law, United Nations

I. INTRODUCTION

Juvenile in conflict with the law is a serious threat to our future generation in our modern society. Prevalence of delinquent activities is more common among the children in India today. But it is a global phenomenon. The occurrence of juvenile crime ever increasing in our present society due to various factors influence on children to committing to delinquent activities including poverty, illiteracy, unemployment, broken families, maltreatment of children, the influence of peer groups, and negative impacts of media, and etc (Nagarajan, P, 2019). The emerging trend of juveniles involved crimes require the criminologists and sociologists discovering the root causes of how juveniles turned into involving criminal activities particularly those who are involving heinous offenses such as murder, rape and other serious offenses. At this moment, effective preventive strategies implementation is an essential one. The appropriate controlling mechanism can be confirmed by taking cautious action in terms of individual and environmental modifications and aftercare and rehabilitation services are one of the necessary duties of the state and the international organization interest on children rights (Darshankumar 2003). The Government of India, having combined ideologies of certain conventions has recognized its relevance to sanction and correct the suitable law i.e Juvenile Justice (Care and Protection of Children Act-2015'. This law has been enacted demeanor in mind that the children alleged and found to be in conflict with law and children in need of care and protection by providing to their basic needs such as proper care, treatment, protection, reformation, development, social re-integration, by adopting a child-friendly approach in the resolution and clearance of matters in the best interest of children and for their rehabilitation. Apart from that, the standard prescribed in the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), UN Convention on the Rights of the Child, (1989), UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990), The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international mechanisms are continuously taken into deliberation to deal with juveniles in the conflict with the law (Murugesan D & Rufus D, 2019)

1.1. Definition of Juvenile Delinquency

The legal definition of juvenile delinquency differs from country to country according to their political decisions. Even the basic concept of 'child' and misbehavior or the 'delinquent behavior' itself differ considerably.

The encyclopedia of 'Crime and Justice' (1983) defines juvenile delinquency as such conduct by children who are either volatile of the prohibition of the criminal laws or is otherwise regarded as deviant and appropriate.

The Juvenile Justice Act of 1986 is considered as model legislation which consistently gets amended in respect of treating and reforming juvenile delinquents, as it was manipulated to remove the humiliation of calling children as delinquents and later renamed such category of children as 'Juveniles in conflict with law' (Murugesan D & Ramakrishnan M, 2014). When it was revised in the year 2000 named as by Juvenile Justice (Care and Protection of Children) Act, 2000, it refers to 'Juvenile' or 'child' means a person (boys and girls) who have not completed the eighteenth year of age. It's also explained that certain children as neglected juvenile. The term 'child in need of care and protection' includes the underprivileged neglected juvenile that is found begging, without the home, without ostensible means of existence, underprivileged, abandoned and victimized (Darshan Kumar, 2003). Though the term 'delinquent' is renamed as "juvenile in conflict with the law", in Juvenile Justice (Care & Protection of Children) Act 2000, for universal understanding, the term delinquent is retained by many authors in repetition. Further amendment of the Act was on 2006 with a view to adopting a child-friendly the approach in the intervention and disposition of matters in the best interests of children and for their rehabilitation and overall development. (Renu Sharma, 2010).

Consequently, the amendment of the Juvenile Justice Act emanated into consequence as Juvenile Justice (Care & Protection of Children) Act, 2015, directing the Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile involved in criminal activities in the age group of 16–18 should be tried as an adult or not only after considering the committees constituted by Juvenile Justice board. Whereas the probability of children between the ages of 16 and 18 years being tried as adults for heinous offenses has ascended, a distinct set of reform and rehabilitation measures have also been taken for such children. (The Gazette of India, 2016, Ministry of Child and Women Development). It is significant that the International court of public view remains to examine countries that treat juveniles as adults, as more critics are emerging with discussion concerning the cognitive development of children (Murugesan D & Rufus D, 2019).

II. JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) MODEL RULES, 2016

These rules spring some recommendations to the Juvenile Justice Systems deal with juveniles come under the classification of conflict with the law. This rule is also focusing on the prevention of children from getting the conflict with the law. Such as "Individual Care Plan" is an all-inclusive development plan for a child, based on age and gender-specific needs and case history of the child, prepared in consultation with the child, in order to remodel the child's self-assurance, dignity and self-worth and nurture him/her into an accountable citizen and subsequently the plan shall treatise the following, including desires of a child, namely:- (a) well-being and nutrition needs, including any special needs; (b) emotional and psychological needs; (c) educational and training needs; (d) leisure, creativity, and play; (e) safeguard from all types of abuse, neglect, and mistreatment; (f) re-establishment and follow up; (g) social mainstreaming; (h) life skill training and etc. (Juvenile Justice (Care and Protection of Children) Model Rules, 2016).

2.1. Statistics on Crime against Children and Children in Conflict with Law

India is home to 472 million children in the age group of 0- 18, constituting nearly 39 percent of the nation's population. India's future confers with these children of today and citizens of tomorrow. Unfortunately, India is also home to many child laborers, destitute children, wandering children, runaways, orphans or abandoned children and victims of sexual and other forms of child abuse. The statistics of National Crime Records bureau, reveals that an over 13 percent increase in crimes against children between 2015 and 2016 as against a 5.3 percent increase between 2014 and 2015. Apart from that, there are several incidences that go unreported. When compare with other countries of the world, in India too, children commit offenses. Crimes committed by children established 0.7 percent of all crimes in 2016, which was the same in 2015. IPC crimes committed by children have remained about 1 percent of the total IPC crimes over the years. Even though, children who come in conflict with the law are a kind that needs attention and involvement so that they can be moved away from the world of crime and offense and placed back in society as responsible citizens. The relationship between children who come in conflict with the law and those in need of care and protection is a strong one. A large number of children (42per cent) apprehended, came from poor families whose annual income was up to only INR 25,000. Nearly 46 percent of the total children apprehended were either illiterate or had been only to primary school. Hence, addressing the needs of vulnerable children is dangerous to the prevention of crime by children. (Hand Book for Field Administrators, JJ Act, 2015, National Gender Centre, Mussoorie)

III. CONSTITUTION OF INDIA

The initial stage to fulfill the rights of children can be established in the Constitution of India. Here are a number of articles that discourse various needs of children as delineated below. The articles are classified into two kinds i.e. Fundamental Rights and Directive Principles of State Policy. Constitution of India guarantees to all the citizens of India: such as the right to equality, protection of life and personal liberty and the right against exploitation are cherished in articles 14, 15, 15 (3), 19 (1) (a), 21, 21 (A), 23, 24, 39 (e), 39 (f) and reiterate India's commitment to the protection, safety, security and wellbeing of all its people, including children (Priyanka M.K, 2019).

IV. UN DECLARATION AND INTERNATIONAL INSTRUMENTS IN FAVOR OF THE CHILDREN IN CONFLICT WITH THE LAW

There are various UN instruments and international mechanisms esteeming with the delivery to deal with, enchantment and rehabilitate the Juvenile in Conflict with the law. In the history of the recent past century, a number of international settlements and documents that framework the rights of a child. Erstwhile to World War II the Coalition of Nations had adopted the Geneva Declaration of the Rights of the Child in 1924. The UN announced its first stage towards pronouncing the importance of child rights by establishing the United Nations International Children's Emergency Fund in 1946 (The name was reduced to the United Nations Children's Fund in 1953, but kept the popular abbreviation UNICEF). Only past a couple of years, the United Nation General Assembly implemented the Universal Declaration of Human Rights, constructing it the first United Nation document to recognize children's need for protection (Childline India Online,n.d.).

Afterward, the Second United Nation Congress on Prevention of Crime and Treatment of Offenders in 1960 designated that juvenile delinquency should be understood as the instruction of an act, which when committed by an adult above a suggested age would constitute an offense in law. Consequently, The Sixth UN Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 considered stimulating and in the constituent of the problem of juvenile delinquency. It was identified that there should be the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. It has been clearly indicating that the entire child has its own human rights and they should not be underprivileged of to it by anyone. Hence, they said that there should be laws to defend the right of the children. Consequently, it was accepted that special consideration should be given to the steps prompted to prevent deviancy among the children and also to homeless and street children in the urban setting. (James Vadackumchery, 1996, pp.139-174).

4.1. UN Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)

It has been providing direction to states on protecting the child rights and concerning their needs when developing distinctive and specified systems of juvenile justice. These rules were to originally highlight the international legal implementation of juvenile justice. These rules were to generously detail norms for the administration of juvenile justice with child rights and child development approach. This rules focused on impartial training and treatment of juveniles placed in child care institutions for the purpose of providing care, treatment, protection, reformation, education, and vocational skills, and also rehabilitation with an observation to helping them to assent socially accepted and innovative roles in society.

Juveniles who are institutionalized shall receive care, treatment, protection, reformation and all necessary action social, educational, vocational, psychological, medical and physical-that they may require because of their age, gender, and disposition and in the interest of their wholesome development.

Juveniles in institutionalized shall be kept separate from adults and shall be detained in a separate home or in a separate part of an institution which also holding adults.

- ❖ Young female children those who are come under the conflict with law placed in a home deserve special attention as to their personal needs and problems. They shall by no means receive less care, treatment, protection, maintenance, and training than young male children come under the conflict with the law. Their fair treatment shall be assured.
- ❖ In the consideration and well-being of the juvenile detained in homes, the parents or guardians and caretakers shall have a right of access.
- ❖ Inter-ministerial and inter-departmental co-operation shall be promoted for the purpose of providing adequate educational or, as appropriate, vocational training to juveniles detained in homes, with a view to confirming that they do not leave the institution at an educational disadvantage (Dahn Bachelor, 2006).

4.2. UN Convention on the Rights of the Child, 1989 (UNCRC)

The United Nations Convention on the rights of the child in 1989 is the most significant instrument in the history of child rights, which established the settlement in 1992. Implemented in 1989, the UNCRC affords a comprehensive structure for the protection of children's rights and, further significantly, establish a wide-ranging citation of the legitimately obligatory commitments towards children that countries are required to implement. Articles 37 and 40 of the United Nations Convention on the rights of the Child deals definitely with the administration of juvenile justice; conversely, it should be stressed that a number of other significant Articles of the Convention on the Rights of the child is most pertinent to any discussion concerning the issue of children's justice including; Article 2 (non-discrimination), Article 3(best interests of the child), Article 9 (separation from parents), Article 19 (protection from abuse and neglect), Article 23 (the rights of disabled children,), 17 Article 28(education), Article 31(Leisure, recreation and cultural activities and Article 39 (rehabilitative care). (Robert Agnew, 1999, pp.123-155)

4.3. UN Guidelines for the Prevention of Juvenile Delinquency: the 'Riyadh Guidelines' (1990).

The Riyadh Guidelines demonstrate a wide-ranging and active method of prevention and social restoration. Prevention is seen as not simply a problem of confronting undesirable circumstances, but rather a means of encouraging growth and well-being. Further predominantly, countries are suggested to improve community based interferences and programmers, to assistance in the prevention of children coming into conflict with the law and to identify that depriving children of their liberty should be utilized only as a means of last recourse. These Guidelines recommend that prevention programmers should give priority to children who are at risk of being uncontrolled, abandoned, exploited, demoralized and abused. It advocates a multidisciplinary and interconnects oral approach to the prevention of children comes under the conflict with law and identifies children to be full participants in society (Murugesan, 2014)

4.4. UN Rules for the Protection of Juvenile Deprived of their Liberty (1990)

UN rules, known as Juvenile Deprived of their Liberty, well-known available principles suitable when a juvenile (any person under the age of 18) is confined to any home/facility (whether this is to be penal, correctional, reformatory, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having involved an offense, or simply because the juvenile is appraised 'at risk' by order of any judicial, administrative or other public authority. In addition, these rules include principles that exclusively define the certain circumstances under which children can be disadvantaged of their liberty, emphasizing that insufficiency of liberty must be a means of previous the resort, for the conformist probable period of time, and partial to exceptional cases. The Juvenile Deprived of their Liberty serve as a worldwide accepted framework intended neutralizing the destructive distinct effects of deficiency of liberty by safeguarding respect for the human rights of juvenile and ensuring the self-worth and welfare of the children are sustained whereas in custody. (Arnold Binder, 2001).

Moreover, several UN organizations and worldwide NGO's effectively working for the well-being of all the children includes children comes under the conflict with the law. Therefore, the above national legislation, as well as international convention and laws were elaborately explained about necessary care, treatment, protection, reformation and rehabilitation of institutionalized juvenile as well as appropriate essential needs of children such as providing education, leisure, and recreation, medical and psychological treatment, protection from all neglect and exploitation as well as appropriate vocational training and etc., to the juveniles apprehended in juvenile institutions. Moreover, all the necessary facilities providing to the juvenile institutionalized in the homes.

V. CONCLUSION

The above deliberations certainly indicate that national as well as international mechanisms attempt and prosper the protection and rights of the children including apprehended juvenile involved so-called antisocial activities. The latest amendments in Juvenile Justice Act 2015 and module rules 2016 highlights the special care, protection, treatment, reformation and rehabilitation of children and also meet their essential needs and care particularly those who come under the conflict with the law. Apart from that, it is obvious through crime reports and media that the occurrence of juvenile crimes are at cumulative tendency in India today. Most of the heinous offenses like rape, murder and other offenses committed by juveniles particularly belong to the 16 to 18 years age category. Hence, the alterations of Juvenile Justice (Care and Protection of Children) Act 2015, allow a Juvenile Justice Board, which would include psychologists and sociologists, to decide whether a juvenile involved in criminal activities in the age group of 16–18 should be tried as an adult or not. The juvenile justice system intensely highlights a dissimilar customary of reformatory and rehabilitative processes to be taken for children in conflict with the law. As like in the developed countries, in India, the children are also protected from cautiously legislated laws and values which endeavor to safeguard the child protection, future and reformation which includes some control mechanism such as state-level stakeholders to protect mainstream children. Apart from the existence of national and international written laws, convention and declarations, etc. In this backdrop, The the government should take essential action along with stakeholders such as criminal and juvenile justice functionaries, NGOs, academicians, doctors, social activists, media organizations and educational institutions to initiate and speed up internationally confirmed prosperous actions and control strategies to prevent the juveniles from involving in the delinquent activities.

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