

Making it Work: Juvenile Justice in India

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A staggering 30 million children in India belonged to families living in conditions of extreme distress and deprivation. Violence against girls, child labour, children living on the streets, trafficking, violence in schools and violence in conflict situations have all been reportedly on the rise. The need for specific instrumentality for children stems from these pressing situations.

Juvenile justice policy in India is largely governed by the constitutional mandate given under Article 15 that guarantees special attention to children through necessary and special laws and policies that safeguard their rights. The Right to equality, protection of life and personal liberty and the right against exploitation is enshrined in Articles 14, 15, 16, 17, 21, 23 and 24. The Constitution of India recognizes the vulnerable position of children and their right to protection.

The course of events concerning juvenile justice in this country was equally influenced by several international developments. It primarily includes the UN Convention of the Rights of the Child(UNCRC) 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985

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Driven by constitutional guarantees for protecting children as well as recognizing international concern for child, the Indian state has made numerous arrangements in this direction. To give effect child protection, a number of laws were brought in.

The Ministry of Women and Child Development has been instrumental in this direction and it has particularly catered to children in crisis situation such as street children, children who have been abused, abandoned children, orphaned children, children in conflict with the law, and children affected by conflict or disasters, etc.

The official stand on child protection is marked by many programmes, in keeping with the current developments, is visible in the approach of the Ministry of Women and Child Development. The National Plan of Action for Children 2005 articulated the rights agenda for the development of children. The existing mechanism of child protection at official level mainly include the following programmes:

- Juvenile Justice Act
- Integrated Programme for Street Children
- CHILDLINE Service
- Shishu Greh Scheme
- Scheme for Working Children in Need of Care and Protection
- Rajiv Gandhi National Creche Scheme for the Children of Working Mothers
- Scheme to Combat the Trafficking of women and Children for Commercial Sexual Exploitation
- Central Adoption resource Agency (CARA)

- National Child Labour Project (NCLP) for the rehabilitation of child labour

In addition to the above, the Ministry has just released its draft scheme '*The Integrated Child Protection*'. This scheme envisages a holistic approach to combat the issues affecting children,

In order to reach out to all children, in particular to those in difficult circumstances, the Ministry of Women and Child Development proposes to combine its existing child protection schemes under one centrally sponsored scheme titled *Integrated Child Protection Scheme (ICPS)*. The proposed ICPS brings together multiple vertical schemes under one comprehensive child protection programme and integrates interventions for protecting children and preventing harm.

Juvenile Justice Act

The Juvenile Justice (Care and Protection of Children) Act, 2000 is more in line with the recent thinking and the emerging need of the treatment and handling of juveniles. The objective of this legislation is to ensure the care, protection and development needs of the children who are either neglected or have come into conflict with law constituting delinquency.

The status of implementation of JJ Act has been notified on the website of the Ministry of Child and Family Welfare. The information columns of different states show their progress mainly about establishment of various institutions as per provisions of this Act. While this information merely gives a very primary idea about basic preparation made in these states, it definitely does not provide any clue about the *quality and effectiveness of the enforcement* of this Act.

Even at the Ministerial level (cited at : <http://wcd.nic.in/welcome.html>) the state of implementation of juvenile justice was not found satisfactory. It is stated ".....these policies and legislations for children have on the whole suffered from weak implementation, owing to scant attention to issues of child

protection, resulting in scarce resources, minimal infrastructure, and inadequate services to address protection problems.”

The Present paper:

The present paper is primarily concentrate on the problems and issues affecting the effective enforcement of the Juvenile justice Act 2000. An analysis of following factors crucial in the implementation of J J Act has been carried out in this paper.

Flawed Approach

The juvenile justice system in India is an offshoot of the criminal justice system. Because of this, its approach towards children has always been marked by the tension between the protective approach of juvenile justice and the traditional approach of dealing with crime. The J J act does not perceive the delinquency or the issue of children exploitation in holistic terms. Resultantly, this law does not emerge as progressive legislation. Its emphasis, tough it seems in obvious terms, is not towards solving the problem of child. The institutional set up suggested in the law seems, at best, interventionist, and not essentially professional.

Imbalances & Irritants

In certain states, there are observed some differences in treatment and other procedure relating to case. This hampers the *uniformity* on national level. The JJ Act prescribes for the creation of different institution for custody, adjudication and trial and treatment of juveniles. The non-setting up of such institutions in the states is a major set back to the successful implementation of JJ Act. A major irritant in the effectiveness of this law remained the unconcerned and apathetic attitudes of the officials associated with this law. The lack of training in handling the affairs relating to children on the part of such officials is found to be a decisive factor. Considerable failures in implementing this law also stems from the lack of coordination amongst various institutions involved in the process. The financial crunch in the institutions involved is also cited as a factor

discouraging the progress of implementation of this law. The career growth of the staff involved in the implementation of this Act has also to do with the fate of this Act.

Bottlenecks

1. The act fails to express the minimum age, below which the Act would not be applicable. The definition of juvenile delinquency provides very little scope for pettyacts to be dealt within the community.

2 There is no concept of parental responsibility in generating situations ripe for delinquency under this Act. In many cases, the parents place the children in situations where their exploitation and abuse become imminent.

3. The education, training and recreation of children, who are in observation homes, have not been provided for. Besides, basic or school education, even higher education and training of these children should be considered in this Act.

4. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial

5. The Act does not take into account the orders and directions of the Supreme Court.

6. It empowers the Juvenile Justice Board to give a child in adoption; even though, it is the Child Welfare Committee that deals with children in need of care and protection. The Act is silent on inter-country adoption. There is no linkage between the Juvenile Justice Act 2000 and the other legal provisions relating to children, for instance child labor, primary education, sexual abuse, adoption, disabilities and health.

7. Juvenile Justice thrives under the shadow of the adult criminal justice agencies and institutions (like the police). Moreover, the juvenile Justice adjudicatory cadres are drawn from the pool of the magistrates from the state.

The Act does not cast any obligation on the part of the state. A rights based perspective, is a missing dimension in this law. In its present shape, child protection becomes more of charity than a commitment. Protection of such children is not seen as a right but as charity or welfare.

The Juvenile Justice Act does not have specific provisions ensuring services for children relating to education, health, legal and social. In the absence of any mechanism of identification of juvenile in need of care and protection, the reach of this law becomes restricted.

Addressing to the requirement of such children needs a regular coordination amongst parallel government agencies working in the similar areas. This lack of coordination and convergence of programmes defies the core objective for juvenile justice policy. The J.J.Act does not have any provisions, which could ensure the continuous supervision, monitoring and evaluation of the functioning of juvenile justice system as a whole.

The coverage of the act is quite limited and a large number of children technically fall away from the preview of this law. The resources and infrastructure required for the effective implementation of this law is hardly proportionate to the population and geographical regions covered under it.

Children caught in the system are often helpless with very little redressal. The children effected by the problems like HIV/ AIDS, drug abuse, militancy, disaster etc. do not have any redressal under this law. Similarly the concomitant issues like child marriage, female feticide, street children, working children too fall away from being covered in it.

The lack of institutional infrastructure and trained manpower in the states has blunted the whole objective of this legislation. The requirement of constitution of Child Welfare Committees and Juvenile Justice board is largely remain unfulfilled resulting in the delay of disposal of cases.

The problem of enforcement of this law is also characterized by the lack of support services to vulnerable families, which becomes a major factor in turning their children into delinquency. The J.J. Act has got relatively greater emphasis on institutional setup as compared to non-institutional services. The facilities and services in the institutions in different states are found to be varying and lacking and there is no yardstick to standardize them. There is a dearth of services and programmes to the children of special needs.

There is no index of performance measurement of the institutions in the area of juvenile justice. Therefore, there is no way of knowing the quality of performance of these segments of juvenile justice.

There are number of incidences violating the procedure of handling of juveniles by the police. Infact the indifference of police towards this law is most disappointing feature. The basic idea of this law has not been internalize by the police due to insufficient training and orientation. The instances of bringing the age of juvenile into adult range while writing the FIR by the police are often heard. Handcuffing and keeping the juvenile in police lockup is not unusual.

The basic idea of juvenile justice was to reintegrate the child into family and society. This needs a proper network of rehabilitation and after care services. Unfortunately, this arrangement is almost nonexistent.

The current juvenile justice policy does not have a preventive approach. The delinquency prone situations are increasing but there is no substantial mechanism to check it.

Looking ahead:

The view was expressed in judgment of the Supreme court as matter of suggestion that wherever any law is enacted by the Government, it should be ensure beforehand that the states are ready with the infrastructure to implement it. Otherwise, besides blunted the objective of the law this puts the whole machinery into unnecessary pressure and frustration. Our zeal to bring the law is more pronounced than evolving the ways and means to enact the same. The need to make a proper study of the feasibility is imperative. At times, the goals of such laws are too ambitious and they do not relate well to the ground level situation.
