

THE AMELIORATION OF JUVENILE JUSTICE IN INDIA

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ABSTRACT

The concept of Juvenile Justice has been a significant part of the vision for a welfare society in the eyes of the reformers, since a long time. India, a sovereign country, has its own set of laws that facilitate juvenile justice and has also established noteworthy institutions for the same. However, with the rise of various controversies and revelation of dejecting cases against the juveniles, the efficacy of these institutions under the Juvenile Justice Act has been raised. The existence of an adequate legislation with have no gravity until it's perfect execution is ensured and therefore, the paper analyses the issues with regards to functioning of the two major institutions under the Act, i.e. the Juvenile Justice Board and the Child Welfare Committee, with the help of a historical, political, legal and social perspective and also suggests recommendations for the elimination of the impediments hindering the path of child welfare.

INTRODUCTION

“There can be no keener revelation of a society’s soul than the way in which it treats its children.” — Nelson Mandela⁶²

Over the past decade, India has witnessed a series of devastating cases that have shook the entire nation and made the citizens question the efficiency of the world’s largest democratic setup. Laws are set in motion to superintend the demeanour of the citizens but at the same time de rigueur permutation with the evolving exigencies of the Nation. These changes are often discerned when questions and criticisms are raised against the laws in terms of their adaptability to the needs of the country. The Nirbhaya Gang Rape Case, one of the most tragic cases in the history of independent India, sparked protests throughout the nation. When

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⁶² COMPASSION, FAMOUS QUOTES ABOUT CHILDREN, <https://www.compassion.com/poverty/famous-quotes-about-children.htm> (last visited June 2, 2020).

the Juvenile convict was sentenced to prison only for a duration of three years, even when the abhorrent act of brutalizing the victim with an iron rod was done by him⁶³, questions were raised against the Juvenile Justice Act (hereinafter referred to as the JJA). It was held that in such cases, the innocence of the juvenile should be taken into consideration over the age factor and simultaneously on 22nd December, 2015, the JJA, 2000 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015⁶⁴. It had two major changes; firstly, the juvenile criminals in the age group of 16-18 years can be tried in the same way as that of the adult criminals⁶⁵ and secondly, now, it was for the Juvenile Justice Board to intuit whether a juvenile offender was to be tried as an adult or to be consigned for rehabilitation⁶⁶. Another major case that questioned the effectiveness of the JJA was the Muzaffarpur Shelter Home case, where the matter of alleged sexual assault of minor girls in a shelter home was presented to the Bihar Government in a report by the Tata Institute of Social Sciences in 2018⁶⁷. Brajesh Kumar, the prime convict along with 18 others were alleged to be involved in this heinous crime. Though Brajesh Kumar was sentenced for life imprisonment⁶⁸, Shelter homes that are established for supporting the disadvantaged children now seemed as a nightmare that threatened their childhood. In order to serve justice, keeping in mind child welfare but also to get to grips with the contemporary challenges, the legislature has stepped in time and again. However, with the reassignment of roles of the Juvenile Justice Board in the JJA, 2015 and the issue of a scarring story with regards to the shelter homes that comes under the ambit of the Child Welfare Committees, the situation calls for the analysis of the effectiveness of these major institutions under the JJA. However, this analysis will remain unaccomplished until a holistic perspective is taken into consideration. Thus, the first step towards this analysis must start from tracing the *fons et origo* of this law in the country which shall not only expedite the discernment of how this legislation was pioneered in the country but to also procure the reasoning behind the perception of this law as a reformist step.

⁶³ Satyender Verma & Laxman Singh Rawat, *Juvenile justice system in India: An overview*, VOL. 3 IJL 23, 24 (2018).

⁶⁴ NDTV, 10 THINGS YOU NEED TO KNOW ABOUT THE NEW JUVENILE LAW, <https://www.ndtv.com/cheat-sheet/10-things-you-need-to-know-about-the-new-juvenile-law-1257667> (last visited May 1, 2020).

⁶⁵ *Supra* note 22.

⁶⁶ PRS LEGISLATIVE ANALYSIS, THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) BILL, 2014, <https://www.prssindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/> (last visited May 1, 2020).

⁶⁷ India Today, Muzaffarpur shelter home case: Brajesh Thakur sentenced to life imprisonment, <https://www.indiatoday.in/india/story/muzaffarpur-shelter-home-case-brajesh-thakur-sentenced-to-life-imprisonment-1645371-2020-02-11> (last seen May 27, 2020).

⁶⁸ *Id.*

JUVENILE JUSTICE IN INDIA: A HISTORICAL BACKGROUND

In India, the postulation of differential treatment for the children can find its genesis in the Code of Hammurabi in 1790 B.C.E., where the responsibility towards these children in terms of supervision and maintenance was identified as the duty of their respective families to be looked after⁶⁹.

After the period of 1849, when Indian administration was taken up by the British Government, replacing the British East India Company, India was placed under the rule of the Governor-General. Krishna Chandra Ghoshal and Jai Narain Ghoshal approached Lord Cornwallis, the then Governor-General, and requested for the establishment of a separate home for the indigent children in Calcutta. This led to the establishment of the ‘Ragged School’ in 1843, whose main raison d'être was reformation of juveniles arrested by the Police⁷⁰. The next step was the Apprentice Act (1850), where cynosure was on dealing with the children between the ages of 10-18 who had committed petty offences or were destitute⁷¹. This was followed by the IPC (1860) that provided a differential treatment by exempting children below the age of 7 to be tried for any criminal culpability as they have not attained sufficient maturity⁷². Then in 1897 the Reformatory School Act was passed as per which the Indian Courts could confine the juvenile delinquents for a time period between two to seven years⁷³. Simultaneously the Act of Criminal Procedure (1898) provided for special treatment of juvenile offenders. This was followed by the Indian Children Act from the Indian Jail Committee (1919-1920) which gave impetus for several provincial governments to enact a separate juvenile act in their own provinces⁷⁴. These included 1920 Madras Children Act, 1922 Bengal Children Act and 1924 Bombay Children Act, with which provinces highlighted their own juvenile laws separately⁷⁵.

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⁶⁹ JIANHONG LIU & R. THILAGARA, RESTORATIVE JUSTICE IN INDIA: TRADITIONAL PRACTICE AND CONTEMPORARY APPLICATIONS 170 (2017).

⁷⁰ N. PRABHA UNNITHAN, CRIME AND JUSTICE IN INDIA 306 (1st ed. 2013).

⁷¹ HISTORICAL DEVELOPMENT OF JUVENILE JUSTICE, JUVENILE DELINQUENCY: AN OVERVIEW, http://14.139.116.20:8080/jspui/bitstream/10603/7114/14/14_chapter%202.pdf (last visited May 2, 2020).

⁷² THE LAW BRIGADE (PUBLISHING) GROUP, JUVENILE JUSTICE IN INDIA, <http://thelawbrigade.com/criminal-law/juvenile-justice-in-india/> (last visited May 2, 2020).

⁷³ M. Ramachandran and M. Kannappan, *A Study on Juvenile Justice System in India before and after NIRBHAYA Case*, Vol. 119 IJPAM 1265, 1268 (2018).

⁷⁴ *Supra* note 10.

⁷⁵ *Supra* note 11.

In 1986 the Parliament of India set forth the first Juvenile Justice Act, that was applicable in a uniform modus operandi throughout the country. This Act was passed to provide ‘care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles’⁷⁶. With changing needs of the country, the Juvenile Justice Act was amended in the year 2000 and was renamed as the Juvenile Justice (Care and Protection of Children) Act, 2000. This was done in order to standardise the approach towards Juvenile Justice in accordance with the International Framework and the Constitution of India⁷⁷. This Act was then amended in 2006, 2010 and 2015, as per the needs of the nation. As a highly specialised Act, it had a two-pronged approach- It made the Juvenile Justice Board responsible for the ‘Children in Conflict with Law (CICL)’ and the Child Welfare Committee’s responsible for the ‘Children in Need of Care and Protection (CNCP)’. Justice as a conception or as a right cannot be limited to the passing of requisite legislations. Justice is sufficed when such legislations are adequately executed in a manner that it helps in the social, economic and political upliftment of the citizens. As mentioned earlier, the Indian subcontinent didn’t only stipulate the amendments in the Juvenile Justice Act but also required the effective implementation of those standardised rules. Therefore, keeping in mind the historical inspiration, that manifests the essence of this law, there is a need to analyse the efficiency of the two major institutions established by it, since these institutions are obligating to the needs of the Juveniles of India.

THE ESTABLISHMENT OF THE INSTITUTION FOR PROTECTION: THE CHILD WELFARE COMMITTEE

Child Protection as a concept is based on the credence that children have to be protected so that they do not fall out of the social security nets and even if they do then they must receive necessary care, protection and support to bring them back in these nets. Thus, the concept of child protection has a direct nexus to every right guaranteed to a child in a country⁷⁸.

The 2000 JJA made it mandatory to establish Child Welfare Committees (hereinafter referred to as the CWC) in every district, that will be the final ascendant to supervise the cases with regards to ‘care, protection, treatment, development and rehabilitation’ for children who need

⁷⁶ INDIAN BAR ASSOCIATION, JUVENILE JUSTICE LEGISLATION IN INDIA, <http://indianbarassociation.org/wp-content/uploads/2013/12/JUVENILE.pdf> (last visited May 2, 2020).

⁷⁷ JURISEDGE, HISTORY OF JUVENILE JUSTICE SYSTEM IN INDIA, <https://jurisedge.com/histroy-juvenile-justice-system-india/> (last visited May 2, 2020).

⁷⁸ Dr. Vivek Joshi, *REVISED INTEGRATED CHILD PROTECTION SCHEME*, Vol. 4 ICPS 1, 6 (2014), <https://cdn.s3waas.gov.in/s3cdc0d6e63aa8e41c89689f54970bb35f/uploads/2018/08/2018080924.pdf>.

care and protection⁷⁹. The appointment of the members of the CWC will be based on the recommendations by the Juvenile Justice Selection Committee, set up by the respective State governments. The committee must incorporate one Chairperson and 4 other members out of which at least one of the members must be a female⁸⁰. It also pre-eminent for the selection committee to corroborate that none of the members are from any adoption agency⁸¹.

Functions of the Committee:

The capacity building of the Child Welfare Committees ensures that during its functioning it will strengthen the child protection system and their response towards the child and justice related issues⁸². The basic functions of the CWC include- taking cognizance of children furnished before the committee, reaching out to children, who need care and protection, but are impuissant to appear before the committee- It can also direct the NGOs or the officials such as the Child Welfare Officers for orchestration of a social inquiry and submit a report to the committee. It is also required to recommend ‘fit’ institutions that could take aegis of the children and at the same time provide a child-friendly milieu to the juveniles. It can also co-ordinate with other departments such as the police department for more effective outreach⁸³. The ‘care’ institutions under the Child Welfare Committee are broadly classified as – the Children’s Homes, the Shelter Homes and the After- Care Facility⁸⁴. The Children’s Home are established in every district by the State governments, either by itself or via a voluntary or non-government organisation. These take up the responsibility of care, treatment, education, development and rehabilitation of these children⁸⁵. Shelter Homes are a specialized unit under the Children’s Home itself that ensure support for certain children who need residential

⁷⁹ *Supra* note 2.

⁸⁰ NATIONAL GENDER CENTRE, JUVENILE JUSTICE ACT 2015,
<http://jjb.bih.nic.in/pdf/JJActHandbookAdministrators.pdf> (last visited May 4, 2020).

⁸¹ Juvenile Justice (Care and Protection of Children) Rules 2007, Central Amendment Act 33 of 2006 (2007).

⁸² SAVE THE CHILDREN, BRIEF REPORT ON COMMUNITY BASED CHILD PROTECTION MECHANISMS SUPPORTED BY PLAN IN INDIA (2012),
https://resourcecentre.savethechildren.net/node/14118/pdf/icprec_brief_cbcpm_report_india_final_2012_0.pdf (last visited May 4, 2020).

⁸³ NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, CHILD WELFARE COMMITTEES IN INDIA (2013),
<http://14.139.60.153/bitstream/123456789/8029/1/A%20Comprehensive%20Analysis%20Aimed%20at%20Strengthening%20the%20Juvenile%20Justice%20System%20for%20Children%20in%20Need%20of%20Care%20and%20Protection..pdf> (last visited May 5, 2020).

⁸⁴ *Supra* note 19.

⁸⁵ NATIONAL INSTITUTE OF PUBLIC COOPERATION AND CHILD DEVELOPMENT, INFORMATION KIT ON CHILDREN IN NEED OF CARE & PROTECTION: ISSUES, PROGRAMMES & SERVICES (2020),
<https://www.nipccd.nic.in/file/reports/kit17.pdf> (last visited May 5, 2020).

care- such as children who ran away from their homes, migrants or child substance abusers- to facilitate their holistic development⁸⁶. There are separate shelter homes for girls, above 10 years of age and boys in the age group of 10-15 and 16-18 years. Again, it is the responsibility of the State governments to ensure the set-up of such homes in their jurisdiction⁸⁷. The After-Care Facility is provided in accordance with Section 46 of the Juvenile Justice Act, 2015, that states ‘any child that is leaving the child care institutions after the age of 18 must be provided with financial assistance to facilitate his/her re-integration into the mainstream of the society’⁸⁸. Thus, this facility is provided to ensure a smooth transition of the juveniles from institutional based life to the main society⁸⁹.

EFFECTIVENESS: A CRITICAL ANALYSIS

The provision for the CWC looks efficacious on paper however, the real-life execution exhibits a different picture that needs to be perused to appraise its effectiveness. Keeping in mind that the functioning of the CWC is also governed by the role of assorted factors in the society, a critical analysis under the realm of the political, legal and social slants has been taken up, in order to clinch a comprehensive stratagem.

THE ROLE OF POLITICS: RISE OF LEADERSHIP OR HINDRANCE?

The role of politics in any legislation is habitually seen as a deterrent from its quintessential implementation and same can be found in case of the JJA 2015. The JJA is to be implemented by states separately in accordance with the Rules under the Juvenile Justice (Care and Protection of Children) Rules 2007. The State government appoints two major committees –

1. State Child Protection Unit (hereinafter referred to as the SCPU) and
2. Juvenile Justice Selection Committee (hereinafter referred to as the JJSC) in accordance with the rule number 91⁹⁰.

⁸⁶ STATE CHILD PROTECTION SOCIETY DELHI, DRAFT RESOURCE MANUAL FOR OPEN SHELTERS, http://wcddel.in/pdf/Draft_Resource_Manual_for_Open_Shelters.pdf (last visited May 5, 2020)

⁸⁷ *Supra* note 17.

⁸⁸ The Juvenile Justice (Care And Protection Of Children) Act, 2015, Central Act 2 of 2016 (2015).

⁸⁹ *Supra* note 17.

⁹⁰ LATEST LAWS, JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) RULES 2007, <https://www.latestlaws.com/bare-acts/central-acts-rules/children-laws/the-juvenile-justice-care-and-protection-of-children-act-2000/juvenile-justice-care-protection-children-rules2007/> (last visited May 7, 2020).

The Juvenile Justice Selection Committee recommends a panel of members for the CWC under apiece district who are then appointed by the State Government. The CWC and its efficiency in any district, all over the country, witnesses more or less the same type of denunciation i.e. its poor infrastructure⁹¹, its unskilled and untrained staff⁹² and the inhumane conditions of these Homes⁹³. The citizens conjecture that it is the abject functioning of the CWC, under the influence of politics⁹⁴, that becomes one of the reasons for the impairment of these Homes. However, the political domination is not in the CWC rather, it trails its provenance at a higher echelon. The CWC consists of five members, all of whom are involved in the field of administration or child welfare⁹⁵, and this CWC is appointed by the JJSC which is again a seven member committee that consists of one retired High Court Judge, one member from the concerned department of state, 2 members from a reputed NGO in the area of child welfare, 2 members from a strong academic background (in field of sociology, psychology, etc.) and one representative from the State Human Rights Commission or State Commission for Women⁹⁶. The configuration for these appointments often accentuates the nominal role of politics, then how does politics come into the picture? The CWC is responsible for bringing up child welfare programmes and also for reaching out to children in need of care and protection⁹⁷. However, the provisions of fund allocation, training of staff, maintenance of infrastructure, regular reports on the effectiveness of the programmes and all the radical assignments that affect the functioning of these Homes comes under the SCPU and not the CWC⁹⁸. The SCPU consists of officers solely appointed by the government and this SCPU is also appointed by the Ministry responsible for child welfare under the State government. In fact, even the defenestration of a CWC member is also done by the SCPU based on a report by the JJSC⁹⁹. Thus, establishing the ground for the

⁹¹ OVERCROWDING, POOR INFRASTRUCTURE PLAGUE STATE-RUN CHILDREN'S HOME, THE TIMES OF INDIA, <https://timesofindia.indiatimes.com/city/delhi/Overcrowding-poor-infrastructure-plague-state-run-childrens-homes/articleshow/11679324.cms> (last visited May 31, 2020).

⁹² Gupta Snehil & Rajesh Sagar, *Juvenile justice system, juvenile mental health, and the role of MHPs: Challenges and opportunities*, Vol. 42 IJPM 304, 304 (2020)

⁹³ Shocking Practices Found in Govt-run Children's Homes, HAQ Centre for Child Rights, <https://www.haqrc.org/news/shocking-practices-found-govt-run-childrens-homes/> (last visited June 1, 2020).

⁹⁴ FALL 2019 JOURNAL: CUSTODIAL TORTURE – JUVENILE JUSTICE HOMES IN INDIA, BERKELEY PUBLIC POLICY JOURNAL, <https://bppj.berkeley.edu/2019/10/11/fall-2019-journal-custodial-torture-juvenile-justice-homes-in-india/> (last visited June 2, 2020).

⁹⁵ *Supra* note 29.

⁹⁶ *Id.*

⁹⁷ *Supra* note 17.

⁹⁸ *Supra* note 20 at pg. 18-19.

⁹⁹ *Supra* note 29.

involvement of politics. The unbridled powers assigned to the SCPU appears to be one of the fundamental reasons behind the CWC not being able to achieve its targets. Funds are denominated in the State Budget and provisions for maintenance and trainings are present then why are these homes categorised as inhumane? This shows us that any plan of action ushered by the CWC will never be able to be completely effective until the basic minimum, as required, is present and prolonged properly in these Homes. Thus, the main criticisms that the CWC faces is something that comes under the ambit of the SCPU, which has the domination over the implementation of the child welfare schemes. This is something that can be best elucidated as a structural defect, as the role of the Government is important to set the seal on necessary leadership and guidance however, this shouldn't be extended to a level that 'dirty' politics gets involved such that it becomes an obstruction in the path of safeguarding the necessitous children. Thus, this role of politics starts from the appointment of the SCPU members, goes on from poor fund allocation and trainings to the power of appointment, as well as removal of the CWC members by the SCPU, and ends with the distortion of the vision of the child welfare.

LEGAL ISSUES

The Children Homes, Shelter Homes and after care facility are outlined in a manner to not only ensure protection and rehabilitation but also 'facilitate the merge of the children in the mainstream society' once they attain 18 years of age. However, to what extent are these children actually protected? The aim of Child Welfare is broadly challenged by two major legal issues; firstly, the establishment of illegal adoption homes and secondly the diabolical conditions within these homes that infringe upon the rights of these children. In the recent times, many illegal adoption homes have been detected in states all across the country¹⁰⁰. Even within the organisations working for charity, the 'occupation' of illegal adoption has been traced time and again¹⁰¹¹⁰²¹⁰³. Adoption laws in India function in accordance with the

¹⁰⁰ THE TIMES OF INDIA , CWC OFFICIALS SEEK CLOSURE OF TWO ILLEGAL CHILDREN'S HOMES IN KANCHEEPURAM, <https://timesofindia.indiatimes.com/city/chennai/CWC-officials-seek-closure-of-two-illegal-childrens-homes-in-Kancheepuram/articleshow/52947867.cms> (last visited May 8, 2020).

¹⁰¹ ILLEGAL ADOPTIONS ON FOR YEARS, PROBE THWARTED EARLIER: CHILD PANEL, THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/news/politics-and-nation/illegal-adoptions-on-for-years-probe-thwarted-earlier-child-panel/articleshow/65286124.cms> (last visited June 1, 2020).

¹⁰² ILLEGAL ADOPTION RAMPANT IN KERALA, THE TIMES OF INDIA, http://timesofindia.indiatimes.com/articleshow/71470265.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited June 1, 2020).

Hindu Adoption and Maintenance Act, Guardians and Wards Act, 1890¹⁰⁴ and the Juvenile Justice (Care And Protection Of Children) Act, 2015 as per which, once the CWC declares a child to be legally free to be adopted only then, he/she can be adopted¹⁰⁵. However, often these adoption centres eschew the entire legal procedure and give up children for adoption. Many genuine adopters also get involved in illegal methodology for adoption, in order to make the process quicker, but what they fail to latch on to is that this gives ascendancy to the practise of illegal adoption to a criminal extent as well. The process of illegal adoption has actually resulted in increased child trafficking (which involves sex slavery, prostitution and even sexual assault) and also forced child labour in the country¹⁰⁶. This is not only confined to the country anymore but has also escalated to the international level, i.e. illegal cross-country adoption¹⁰⁷.

The conditions within the Shelter Homes are also not up to the scratch. The staff of these homes have time and again been accused of criminal charges¹⁰⁸. Children are kept in inhumane conditions as a result of which they are both mentally as well as physically tortured. They are repulsed the essentials of a basic living: proper food, water¹⁰⁹ and urination facilities¹¹⁰¹¹¹. If nothing, by denying proper ingress to a ‘healthy environment’, these conditions violate Article 21 at the first place itself. These are two types of illegal/unconstitutional activities, broadly, that cognate with the functioning of the CWC. The major issue we see here is that these unlawful activities not only affect the aim of child welfare but also leads to the continuation of these illegal practices despite the existence of a legal framework, within an institution established by the ‘lawmaker’ itself.

¹⁰³ INDIA MOVES TO SPEED UP ADOPTION, THE GUARDIAN, <https://www.theguardian.com/world/2015/mar/30/india-delhi-speed-adoption-orphans> (last visited June 1, 2020).

¹⁰⁴ Priyal Garg, *Legal provisions of adoption in India: A critical study with special reference to child protection*, Vol. 4 IJL 10, 10-11 (2018)

¹⁰⁵ FREQUENTLY ASKED QUESTIONS (FAQ’S), JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015, <http://cara.nic.in/PDF/faqs.pdf> (last visited June 2, 2020).

¹⁰⁶ *Supra* note 38.

¹⁰⁷ THE SUBWAY MORNING HERALD, EVIDENCE OF TRAFFICKING OF INDIAN CHILDREN FOR ILLEGAL ADOPTION EMERGES, <https://www.smh.com.au/national/evidence-of-trafficking-of-indian-children-for-illegal-adoption-emerges-20140124-31e84.html> (last visited May 10, 2020).

¹⁰⁸ SAVE THE CHILDREN, HOW INDIA’S CHILDREN ARE MISTREATED AT ORPHANAGES, <https://www.savethechildren.in/resource-centre/articles/how-india%E2%80%99s-children-are-mistreated-at-orphanages> (last visited May 10, 2020).

¹⁰⁹ Jayna Kothari, *The Right to Water: A Constitutional Perspective*, IELRC 1, 2-3 (2006), http://www.ielrc.org/activities/workshop_0612/content/d0607.pdf.

¹¹⁰ *Supra* note 37.

¹¹¹ Indian Legal, Shelter Homes for Children: Scarred for Life, indialegalalive.com/?p=53253 (last visited May 11, 2020).

SOCIAL ASPECTS

Children are considered to be the assets of a nation; who can bring about a meaningful change. At the same time children are the most vulnerable groups in terms of potential of getting involved in the crimes: both as a victim or as a member of the Criminal activities. In order to prevent this, it is the duty of the CWC to ensure the integration of these vulnerable children in the society by setting an atmosphere that ensures their holistic development but do the children effectively integrate with the society? While analysing how political issues affect the all-inclusive infrastructure and functioning of the Child Welfare Committee and how the illegal activities have perturbed the overall authentic idea of child welfare; social consequences that shall be deduced will be worse than expected. Children in these homes are often exposed to conditions worse than that of 'prisons'¹¹² which affects their development. Children Homes these days are not only becoming victims of unfulfilled basic needs but in the recent times, cases have also come up showcasing how these children are exposed to illicit behaviour within the Homes¹¹³. This is again attributed to the lack of untrained and unskilled staff in these homes and also their increasing involvement in the criminal activities¹¹⁴. Through this data, that more or less concludes the defeat of the objective of safety and security of these children, we set up a scenario that determines the grounds of the future social setup of these children once they leave these Homes. 'Beyond 18, Leaving Child Care Institutions', a study conducted in the year 2019, supported by UNICEF and TATA Trusts¹¹⁵, displayed the kind of difficulties children had to go through. It conducted surveys from 5 states in the country such as Maharashtra, Rajasthan, Karnataka, Delhi and Gujarat. The report highlighted how these children were unable to be 'independent' after leaving these Homes due to the conditions they were made to stay in. Not only the independence but also the ability of maintaining interpersonal relations are also damaged to an extent that these children find it difficult to maintain stout societal contacts even with their own families and

¹¹² THE HINDUSTAN TIMES, 40% OF JUVENILE DELINQUENTS IN HOMES WORSE THAN JAILS: SC, <https://www.hindustantimes.com/india/40-of-juvenile-delinquents-in-homes-worse-than-jails-sc/story-CaWUMuIS7VZrqTqWovpB8J.html> (last visited May 11, 2020).

¹¹³ BBC NEWS, THE HORROR STORY INSIDE AN INDIAN CHILDREN'S HOME, <https://www.bbc.com/news/world-asia-india-45124802> (last visited May 12, 2020).

¹¹⁴ *Supra* note 53.

¹¹⁵ THE HINDU, 'AFTER SHELTERS, CHILDREN UNABLE TO FIND WORK', <https://www.thehindu.com/news/national/after-shelters-children-unable-to-find-work/article29214056.ece> (last visited June 2, 2020)

peers. The remedy for issues with regards to the child's integration in the society is sought by the provision of After Care Facilities in the JJA¹¹⁶. However, After-care facilities are rarely provided since they are extremely few in number and are almost non-existent¹¹⁷. The study also indicates that how even when the facilities do exist, many children remain unaware of them and thus are never able to utilise it¹¹⁸.

This report has taken cases from one of the largest states, not only in terms of area but also in terms of growth rate, in India¹¹⁹ and still gives a negative viewpoint for the conditions of children within the Home as well as after leaving these Homes. This shows that if this is the condition one of the most prosperous states of the country, then the conditions in the other minor states could be more or less the same or even worse. Thus, the shelter homes are still unable to bring about a massive (expected) change in the children's social interactions.

ESTABLISHMENT FOR THE CHILDREN IN CONFLICT WITH LAW: THE JUVENILE JUSTICE BOARD

The Juvenile Justice Board (hereinafter referred to as the Board) was configured in order to deal with children in conflict with the law¹²⁰. Children in conflict with the law is defined as a "child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence"¹²¹. Thus, persons who commit an offence- (i) when below the age of 18 years or (ii) under the age of eighteen years and during the course of inquiry of the said offence completes the age of eighteen years- are to be tried under the provisions of this Act, i.e. by the Juvenile Justice Board.

The board comprises of a Metropolitan Magistrate or a Judicial Magistrate of First Class referred to as a Principal Magistrate alongside with two social workers, one of whom must be a woman. It is required for the Principal Magistrate to have a minimum experience of three years and at the same time the social workers must be actively involved in the field of health,

¹¹⁶ UDAYAN CARE, *BEYOND 18 LEAVING CHILD CARE INSTITUTIONS*, 29-36 (2019).

¹¹⁷ THE NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, CHILD WELFARE COMMITTEES IN INDIA (2013),

<http://14.139.60.153/bitstream/123456789/8029/1/A%20Comprehensive%20Analysis%20Aimed%20at%20Strengthening%20the%20Juvenile%20Justice%20System%20for%20Children%20in%20Need%20of%20Care%20and%20Protection..pdf> (last visited May 13, 2020).

¹¹⁸ *Supra* note 59.

¹¹⁹ GOVERNMENT OF INDIA, STATE WISE DATA, <https://esopb.gov.in/static/PDF/GSDP/Statewise-Data/statewisedata.pdf> (last visited May 14, 2020)

¹²⁰ The Juvenile Justice (Care and Protection of Children) Act, Sec.2(13), 2015

¹²¹ PRESS INFORMATION BUREAU, CHILDREN IN CONFLICT WITH LAW, <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1595255> (last visited May 20, 2020).

education, or welfare activities pertaining to children for at least seven years or should be a practising professional with a degree in subjects such as child psychology, psychiatry, sociology or law¹²². Further, the provision for induction training and sensitisation on various aspects pertaining to children and their requirements are also present and come under the responsibility of the State government.

FUNCTIONING OF THE BOARD

The central functioning of the JJB is with regards to dealing with the children in conflict with law and the procedure for the same is provided under chapter IV of the Act.

A child who is alleged to be in conflict of law must be produced before a Juvenile Justice Board of jurisdiction within 24 hours excluding the time taken to travel and under no state of affairs, the child is supposed to be placed in a jail or police lockup. The child may be furnished before an individual member of the board, when it is not in sitting¹²³. The standard plan of action calls for the board to grant bail to any child brought before it¹²⁴ or place the child under the care of a probation officer or any fit person, however, the bail can be denied under specific circumstances. Although it does have the authority to hold an inquiry of a child¹²⁵, the same must also ensure that all procedures are child friendly and the venue is not intimidating to the child¹²⁶. The inquiries also have a set time limit for their cessation i.e. four months with maximum protraction of two more months for normal inquiries and three months on permission by Chief Judicial magistrate for inquiries of heinous offences.

The board is allowed to act in the absence of any member. However, this is subject to the restrictions that no final disposal of any case may take place without the presence of at least two members including the Principal Magistrate, which was further reiterated in the criminal revision petition of State of Himachal Pradesh v. Happy¹²⁷. The post inquiry results present us two scenarios. First scenario is when the child is declared not guilty. In this case the board, if it does find, such a child in need of care and protection, it may refer the child to the

¹²² The Juvenile Justice (Care and Protection of Children) Act, Sec.4(3), 2015

¹²³ The Juvenile Justice (Care and Protection of Children) Act, Sec.7(2), 2015

¹²⁴ India Legal, Refusal of Bail To Juvenile May Go Against Intention Of The Juvenile Justice Act Says MP High-Court, <https://www.indialegallive.com/constitutional-law-news/courts-news/refusal-of-bail-to-juvenile-may-go-against-intention-of-the-juvenile-justice-act-says-mp-high-court-100434>

¹²⁵ The Juvenile Justice (Care and Protection of Children) Act, Sec.14, 2015

¹²⁶ The Juvenile Justice (Care and Protection of Children) Act, Sec.7(1), 2015

¹²⁷ State of Himachal Pradesh V. Happy, Review Petition (criminal) No. 407 of 2018, (HC of H.P. May 28,2019)

committee with felicitous directions. The second scenario comes up when the board does find the child guilty of a petty offence, or a serious offence, or a child below 16 years of age guilty of committing a heinous offence. In this case, the board may, based on the nature of offence, specific need for supervision or intervention, circumstances mentioned by the social investigation report and past conduct of the child, may pass directives under Sections 18(1) and 18(2) of the Act. If a child over 16 years but under 18 years commits a heinous offence then, such an alleged child is not held under trial by the board¹²⁸, rather the board holds a ‘preliminary assessment’. In this assessment the board tries to assess the mental and physical capacity of the child to perpetrate the alleged offence and decide whether the child should be tried as an adult offender. The assessment is broadly based on the ability of the child to understand the consequences of the offence and the circumstances under which the child is alleged to have committed the offence. If the board decides not to try a child as an adult, then the board holds a normal inquiry. However, in case it decides that the child must be tried as an adult, then the Board transfers the case to the Children’s Court. Moving on, it is also pertinent to evaluate the impact that the current condition and working of the Juvenile Justice Board has in our reality and as such, the next section deals with the real life implications of the Juvenile Justice and its working. The implications are discussed from three perspectives: political, legal and social.

THE HINDERANCE: INGRESS OF POLITICAL EVIL

The members of the Juvenile Justice Board are selected by the Juvenile Justice Selection Committee¹²⁹. From the provision of selection, induction and training to the checking of their actual performance, all are monitored by the JJSC, which is itself appointed by the State Government. Just like the CWC, not only the selection, but even the removal of the members, apart from the Principal Magistrate, is also in the hands of the State government. In order to further comprehend as to how politics ingresses in the functioning of the JJB, there is a need to apprehend the loopholes, that the JJA 2015 and the JJ rules 2007 have, that can be effortlessly exploited. The provisions with regards to recruitment are obscure. The Act states that the posts, apart from the Magistrate, can either be filled by social workers or by professionals. The social workers that are to be appointed must be ‘actively’ involved in child

¹²⁸ The Juvenile Justice (Care and Protection of Children) Act, Sec.15(1), 2015

¹²⁹ The Juvenile Justice Care and Protection of Children Rules 2007, Sec. 91

welfare activities. However, there is no discrete description of what actively involved connotes, which then becomes subject to the explication of recruiters. Similarly, it also states that these members must be ‘practising professionals’ with an academic background in certain subjects but there is no mention as to how long one must be practising professionally in order to qualify rather it gives that the person should not be less than 35 years of age, which is no guarantee of experience in field. This then suggests that while a degree is a must, experience can be discounted. Putting the entire blame, of the possibility of appointment of non-competent members, on the State is not justified. Often the deserving and qualified citizens do not apply for such posts due to multiple hardships that can be faced by the members such as postings in unwanted districts. However, even among the applicants, the loopholes in the rules and the Act give space for political considerations to come into the picture. The issue is not only limited to the involvement of politics in the appointments, rather it is more focussed on how this issue gives rise to several other issues in the functioning of the Board, in the real life.

ISSUES

The entire motive of the board is to deal with children in conflict with the law, thus it is imperative to discuss the legal implications of the board in its current conditions. The major legal issue at hand is the whole scepticism engendered by Section 15 of the Act which deals with the preliminary assessment of children. The procedure of this preliminary assessment seems to violate the principle of presumption of innocence¹³⁰, which is the one of the general principles that must be followed when implementing any provisions of the act. The final disposal of cases of heinous offences is done by the children’s court, yet it is the board that determines if the child is to be tried as an adult or not. If the board determines the child is to be tried as an adult in court, then it recognises that the child had the mental and physical ability to commit the crime and savoir faire to comprehend the denouement of his illegal act. The principle of presumption stands void if the accused is found guilty through facts and evidence, but in the case of preliminary assessments the aim is not to manifest the guilt of the child but rather to assess his ability to commit an offence and understand the consequences. Thus, if the board directs the juvenile to be tried as an adult, does it not reckon the child to be capable of mala fide intent before the child is actually found guilty? Another major issue

¹³⁰ The Juvenile Justice (Care and Protection of Children) Act, Sec.3(1), 2015

faced, is that many a times these alleged children in conflict with law are not even produced before the board, while there are checks to ensure that no child is tried as an adult¹³¹ or are not produced before the board¹³², we cannot ignore the incidents when it does happen. In accordance with the Section 16 of the Act, the Chief Judicial Magistrate or the Chief Metropolitan Magistrate must review the pendency of cases every three months and can either direct the board to increase the number of sittings or recommend the formation of an additional board. A parallel review is also undertaken by a high-level committee every six months. These measures are placed in order to assure that the number of cases do not overwhelm the board and at the same time regulates uniformity in the work pattern of the board. However, this only overburdens the Board with excessive responsibilities, as a result of which just like the judiciary¹³³, even the JJB has many unresolved cases. The issue of pendency of cases was dealt by the Hon'ble Supreme Court in the case of Sampurna Behura Vs Union Of India¹³⁴, in which the Court directed the states to clear such pendency in the Juvenile Justice Boards¹³⁵.

SOCIAL ISSUES

In cases where the accused is under the age of 18, he/she must be produced before the board. However, many a times proper procedure is not followed or even ignored, as a result of which the juvenile is tried as an adult in the court. The Hon'ble High Court of Karnataka also reiterated, in a recent case of 2019, that the only competent authority, to pass orders in accordance with section 15 of the JJA, is the JJB and not the sessions court¹³⁶. This case is one of the many cases where the accused is under the age of 18 and yet is prosecuted as an

¹³¹ SccOnline, Kar HC | Sessions Court has absolutely no power to pass an order under S. 15 of JJ Act; Statutory power vested with JJ Board, <https://www.scconline.com/blog/post/2019/10/10/kar-hc-sessions-court-has-absolutely-no-power-to-pass-an-order-under-s-15-of-jj-act-statutory-power-vested-with-jj-board/> (last visited 28th May 2020)

¹³² Live Law, "Police Acted Beyond The Powers": Kerala HC Stays Criminal Proceedings Against Children Below 7 Yrs Of Age, Accused Of Rape, <https://www.livelaw.in/news-updates/police-acted-beyond-the-powers-kerala-hc-stays-criminal-proceedings-against-children-below-7-yrs-of-age-accused-of-rape-read-order-156535#> (last visited, 2nd June, 2020)

¹³³ PRS LEGISLATIVE ANALYSIS, PENDENCY OF CASES IN THE JUDICIARY, <https://www.prssindia.org/policy/vital-stats/pendency-cases-judiciary#:~:text=Despite%20an%20increase%20in%20disposal,40%25%20in%20the%20subordinate%20court> (last visited 4th June, 2020)

¹³⁴ Sampurna Behura Vs Union of India, Writ Petition (civil) No. 473 of 2005, (Sc, February 9, 2018)

¹³⁵ Human Rights Law Network,

¹³⁶ Sri Puneet S vs State Of Karnataka, Criminal Appeal No. 1597 of 2018 (HC of Karnataka, September 23, 2019)

adult, thus, defeating the entire purpose of the JJA. The conditions that these children undergo when imprisoned would lead to social impairment, thus, rendering their chances for rehabilitation even worse. In addition to this, the issue of pendency of cases, which results in the matter being dragged on for long, further aggravates the suffering of these juveniles. When the children in conflict with law complete the prescribed term of rehabilitation, they are not always able to lead normal lives. The stigmatisation of juvenile delinquents, even the ones acquitted of all charges, in the society not only distorts both, their personal and professional lives. In a recent occurring, a man was rejected for a post in Central Industrial Security Force, just because of a FIR registered against him in the past, even though he had been acquitted of the charges. When the matter reached the Supreme Court¹³⁷, it was held that the rejection was unjust and that “even if he had been convicted, the same could not have been held against him for getting a job, as admittedly he was a minor when the alleged offences were committed”¹³⁸. Hence, the juvenile justice is not always able to stop the social stigma around it and rather becomes a labelling agent¹³⁹ which itself hinders the rehabilitative measures.

CONCLUSION

The concept of Juvenile Justice has always been upheld, as the reformers believed that children could and need to be reformed. This reformation was not only crucial to save these innocent lives from being tormented like that of the adult criminals, but also to rehabilitate them, thus, promising a constructive destiny. Juvenile Justice marked its presence in India even before independence and till date the legislation is seen as one of the most significant steps for providing a more sustainable future to the sovereign nation. While the Juvenile Justice Act has evolved with the needs of the country and has many imperative provisions, this paper primarily focussed on the institutions established to provide justice to the juveniles at large.

¹³⁷ Union Of India And Ors. Vs. Ramesh Bishnoi, Civil Appeal No. 9109 pf 2018, (SC on November 29, 2019)

¹³⁸ Latest Law, SC: Juvenile Crime shall not be a stigma upon attainment of Adulthood, <https://www.latestlaws.com/latest-news/sc-juvenile-crime-shall-not-be-a-stigma-upon-attainment-of-adulthood-read-the-judgement/> (last visited June 9, 2020)

¹³⁹ Anne Rankin Mahoney, The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence, *Law & Society Review* Vol. 8, No. 4, Pg. 587 (1974)

The Child Welfare Committee as an initiative aims to prevent the children, who are vulnerable, from falling into the hands of the societal evils. It not only focuses on the prevention but also establishes a set up that ensures a healthy development of the child for future endeavours. While the ideology behind this Committee is one of the best reformist steps for societal benefits, at the same time lack of adequate execution of the said provisions defeats its entire purpose. Similarly, the competence of the members of the Juvenile Justice Board can be easily brought into question, the vagueness in the provisions grants the state discretionary powers and the loopholes create the conditions for exploitation just to gain position of power , which may undermine the effect of the Juvenile Justice Board as a whole. Nonetheless, the entire initiative, though with defects, has continued to function in this democratic set up and will continue to do so. This not only shows the willingness of being able to provide justice but also commitment towards the establishment of a welfare society. However, the evils identified as a hindrance in this process cannot be left ignored, as they will continue undermining the process of Juvenile Justice. Therefore, along with the identification of the issues at hand, the need of the hour calls for novel and feasible solutions.

RECOMMENDATIONS

As stated previously, the CWC and the JJB as institutions are one of the most important steps to ensure child welfare at large. However, due to certain drawbacks they are unable to achieve their targets in the best way possible. While analysing the structural defects as well as the contemporary issues that act as an obstruction, the Authors would like to suggest solutions for the same as a belief that these steps might be feasible and can help in the improvement of its functioning.

The structural defect in the allotment of powers, at the state level, affects the functioning of the CWC by creating space for possible political evils to intrude. For this, the author believes that more powers must be assigned to the CWC, under the supervision of the JJSC, over the SCPU in certain fields. The appointment of the members of both, the JJSC as well as CWC, primarily excels in the field judiciary, administration as well as social work. Therefore, this provides grounds for the members to have expertise in areas that, if improvised, in an efficient manner, will further help the CWC better achieve its goals. Thus, the provisions for maintenance of infrastructure and training of staff must directly come under the jurisdiction of the CWC members. In order to avoid arbitrary usage of power and ensure greater

productivity, monthly reports of progress in the respective fields must be prepared by the CWC and should be presented to JJSC that further gets the approval/disapproval for the same, under the guidance of the SCPU.

The cause behind the rise of legal issues in the functioning of the CWC is primarily because of untrained and unskilled staff that imposes inappropriate behaviour over the juveniles. For this, as mentioned earlier, trainings should take place under the supervision of members excelling in the respective fields and at the same time reports must be prepared for the same in order to fix the problem more objectively. Another issue was the rise in illegal adoptions and the establishment of illegal adoption homes. Remedies for the same are brought by the Parliament as the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018 has already been introduced. This Bill has further decentralised the process that will facilitate greater ease in adoption and at the same time avoid illegal procedures due to greater vigilance¹⁴⁰. However, beyond the implementation of these bills, once they become an Act, the other factors helping this cause would be more vigilant policing in the respective districts and strict actions to be taken against the people involved in such heinous crimes.

The conditions within the Shelter Homes disable the children to overcome their internal fear that further affects their societal approach. Therefore, the Homes must aim at providing more comfortable and understanding environment for the children. The inspection committees should be made more active. The CWC must also focus towards working on providing more and more long-term workshops for the children that not only increases their awareness, against the injustices they might face in their lives, but also makes them more confident and prepared for future endeavours. These workshops must also help in development of both ‘interpersonal as well as intrapersonal’ skills. Every district or block more or less, has its own set of renowned and qualified social workers who are ready to serve the nation. It is therefore crucial for the CWC, in collaboration with the District Child Protection Unit, to take the help of such people for trainings and workshops of the children to ensure holistic development. This in totality is something which is feasible in the current scenario as well as needed for the Committee to protect and safeguard the children and prevent them from falling outside the social security net.

¹⁴⁰ PRS Legislative Analysis, The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2018, <https://www.prsindia.org/billtrack/juvenile-justice-care-and-protection-children-amendment-bill-2018> (last seen June 3, 2020).



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When it comes to the Juvenile Justice Board, the major issues that must be resolved is the pendency of cases. In the author's opinion, the same can be improvised by the creation of number of boards in a district in proportion to its population, as it will help in reduction of the burden of excessive cases and cater to a larger population in a more effective manner. Reports about the number of cases disposed or pending must be submitted by the board to the Chairperson on a monthly basis and the same must be reviewed every month instead of the current three months. Similarly, the frequency of review into the working of the board by high level committee must also be increased. In order to prevent the entry of political evils in the appointment the selection criteria for the board members must be more detailed and objective. This will also help in avoiding the appointment of ill-fitted members. In order to tackle the illegal procedures that the juveniles undergo, awareness campaigns must be taken up for the people to be informed of their rights. These campaigns must also be based on tackling the societal stigma that hampers the ability of the juveniles to integrate with the society. Citizens must be aware of both rights as well as why stigmatisation of the innocent is misleading and how rehabilitation must be promoted and not discrimination. Thus, structural alterations, provision-execution improvisation, awareness for social justice and rehabilitation and vigilance of the authorities in charge can be taken altogether to help these institutions overcome their drawbacks up to certain commendable extent to stop the injustice caused by not doing so.

WORDS SPEAK