

NATIONAL JUDICIAL ACADEMY



ANNUAL NATIONAL SEMINAR ON WORKING OF THE JUVENILE JUSTICE BOARDS IN INDIA (P-1019)

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Programme Report

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Background & Objectives of the Programme

The National Judicial Academy, in furtherance of its vision and mandate, has initiated a series of programmes in the academic year 2016-17 with emphasis on special courts dealing with specific matters. These programmes have been conceptualized with the objective of examining the specialized approach to certain classes of cases and the unique challenges faced by the judges in dealing with these classes of cases. The National Judicial Academy organized the Annual National Seminar on Working of the Juvenile Justice Boards in India with the purpose of focusing on the functioning of the Juvenile Justice Boards in India. The objectives of the seminar were threefold-

- (i.) To discuss and analyse the recent jurisprudential development in the juvenile justice law with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act 2015') and the Juvenile Justice (Care and Protection of Children) Rules, 2016 ('Model Rules 2016') and its impact on the Juvenile Justice Boards ('JJBs') and their functioning.
- (ii.) To examine and analyse the functioning of the Juvenile Justice Boards and the issues and challenges faced by JJBs in dealing with cases of juveniles.
- (iii.) To provide an opportunity to discuss the problems and unique needs of JJBs in conducting proceedings and to understand and appreciate functioning of these courts. The programme also sought to provide a forum for the presiding officers to introspect, to share their experiences and also to express the major challenges and constraints faced by these courts.

Day I

Introductory Address

The first session began with an introductory address by Prof. D.P. Verma, Additional Director (Training & Research), NJA. Prof. Verma dwelt on the jurisprudential evolution of the juvenile justice law. He dwelt on the emergence of rights in jurisprudence, from contract as elucidated by Sir Henry Maine to Welfare based approach to the rights based approach which states that all persons are vested with certain inalienable rights.

Session I

Theme - Jurisprudential Evolution of the Juvenile Justice Law in India

Speakers: Prof. Ved Kumari and Ms. Geeta Ramaseshan

Chair: Hon'ble Dr. Justice SS Phansalkar Joshi

The speakers discussed the major changes introduced in the juvenile justice law with the enactment of the JJ Act 2015 and the causal factors that triggered this change in the law. Prof. Ved Kumari discussed the following major changes in the juvenile justice law –

- Categorization of offences into Petty, Serious and Heinous offences.
- Transfer of Juvenile to Children’s Court for trial in heinous offences committed by Juveniles between the ages of 16 -18 years.
- Preliminary assessment of juvenile’s mental and physical capacity and ability to understand the consequences of their act.

It was stressed that restoration and rehabilitation continues to be the chief objective as stated in the preamble to the JJ Act 2015 and the general principles which were provided in the Juvenile Justice (Care and Protection of Children) Rules 2007 (‘JJ Rules 2007’) is now included in the JJ Act 2015. Hence, restoration and rehabilitation should be kept in mind by the Juvenile Justice Boards while exercising their functions.

The selective transfer of juveniles in the age group of 16 to 18 years who have allegedly committed a heinous offence and the procedure to be followed by the juvenile justice boards in dealing with cases of juveniles in the age group of 16 to 18 years was discussed.

The following major issues emerging with the enactment of JJ Act 2015 were discussed –

- It was expressed that there is a difference between the ability to understand the consequences of one’s act and the ability to understand the difference between right and wrong. It was opined that children do not have requisite understanding of right and wrong.
- In the categorization of offences prescribed under the JJ Act 2015, where would the offences which have no prescribed minimum punishment fall? It was opined that the judges need to strictly interpret the provisions of JJ Act 2015 and the offences which have no minimum prescribed punishment would not fall in the category of heinous offence. It was stressed that there is a need for cautious and conscious thought in categorization because if the offence is categorized as heinous, the criminal liability substantially increases in case of juveniles in the age category of 16-18 year old.
- In case the juvenile chooses to remain silent at the time of preliminary assessment, assistance can be taken of the parents of the juvenile and also of counsellors and psychologists to get an idea about the child.
- It was opined that preliminary assessment of mental maturity will be a major challenge for the JJBs as there is no definite science to aid the JJBs in determining mental maturity. Further, most

places have difficulty procuring the services of a psychologist as will be required to make the preliminary assessment.

- It was suggested that a Standard Operating Procedure is needed to be put in place for preliminary assessment to bring in uniformity and consistency as the statutory provision is silent on the procedure for Preliminary Assessment.

Session II

Theme - Fair and Speedy Inquiry under JJ Act

Speakers: Dr. Justice SS. Phansalkar Joshi and Ms. Geeta Ramaseshan

The speakers discussed the fundamental differences between the criminal justice system and the juvenile justice system to highlight the differences in the approach of the criminal courts and the JJBs. It was highlighted that the juvenile justice system is a non-adversarial system where emphasis is placed on restoration and rehabilitation rather than on punitive action. Further, the JJB conducts an inquiry rather than a trial and hence, the approach of the JJB to the inquiry should be informal and should be conducted with a view to understand the root cause of the problem and not merely to find the guilt and convict the juvenile. The speakers stressed that the judges need to divest themselves of their judicial aura and approach to trials and adopt an informal approach while presiding over the JJB. However, though it is an inquiry rather than a trial and is an informal process, certain fair trial rights must not be lost sight of. These rights include constitutional rights as well as rights under the Convention on the Rights of the Child. Fair Trial Rights that are particularly important to a child which were discussed are -

- Presumption of Innocence
- Effective Participation of the juvenile in the process
- Right against Self-incrimination, including the right to remain silent
- Non-waiver of rights and the right to have the charges proved against him.
- Right to Privacy and confidentiality

The speakers also discussed the non-stigmatizing semantics and court procedures that are required to be adopted by every JJB, and stressed on this as an important element of ensuring the best interests of the child. The JJBs need to ensure that every contact of the child with the system has positive outcomes. The approach of the JJB should be child friendly i.e. approach that is humane, considerate and in the best interests of the child. Emphasis of the JJB should be on the juvenile and his circumstances rather than the nature of the offence.

Session III

Theme - Grant of Bail to Juveniles in Conflict with Law

Speaker: Dr. Justice SS Phansalkar Joshi

In this session, the law as laid down in Section 12 of the JJ Act 2015 was discussed. It was stressed that the provisions relating to grant of bail to juveniles in conflict with law needs to be read in consonance with 3 principles mentioned in Section 3 of the JJ Act 2015 i.e. Principle of repatriation and restoration, fresh start and institutionalization as a measure of last resort. Bail should be granted to every juvenile as a matter of right and refusal should only be done as an exception in cases where the grounds for refusal of bail as mentioned in Section 12 of the JJ Act 2015 are fulfilled. The grounds for refusal of bail were discussed in detail and it was opined that bail should be denied only when the JJB has reasonable grounds to believe that the condition prescribed in Section 12 is fulfilled. The term 'reasonable grounds' would mean that there is sufficient evidence or material to believe that the particular ground is fulfilled. It should not be an apprehension without any basis. Further, denial of bail on the grounds that the juvenile will come into association of any known criminal was interpreted to mean that the criminal should be known to the juvenile and his family and that the link between the juvenile and the criminal should be established. Further, the ground that the release of the juvenile will defeat the ends of justice was interpreted to mean that the juvenile should not be enlarged on bail when there is reason to believe that the juvenile will interfere with the investigation, inquiry or would pose a threat to the victim or witnesses. To further the interest of justice and the best interests of the child, conditions can be imposed with the bail such as supervision by probation officer, enrollment in school or vocational training etc.

Session IV

Theme - Role of Courts in Adoption Matters

Speaker: Mr. Binod Kumar Sahu

Chair: Dr. Justice SS Phansalkar Joshi

In this session, the speaker discussed the evolution of the law relating to adoption. Prior to the Juvenile Justice Act, 2000 the right of adoption was available only under the Hindu Adoption and Maintenance Act. There was no legal recognition of the right of people from other religions to adopt. The genesis of the present system of adoption is from the Lakshmi Kant Pandey judgment of the Supreme Court in 1984. Under this the Central Adoption Resource Agency was established to monitor the adoptions in the country. The speaker also dwelt on the Shabnam Hashmi case in which

for the first time debated over the right of a person to adopt and the right of a child to be adopted. Though the Supreme Court held that the country is not ready for elevation of right of adoption into a constitutional right, but the thought has begun where the right of a child to a family is recognized.

The speaker discussed the role of the court in adoptions under the Hindu Adoption and Maintenance Act and the JJ Act 2015. The court's permission to adopt under this act is required only in the following cases (Sec 9(4) of HAMA):

- where both the father and mother are dead
- where both the father and mother have completely and finally renounced the world
- where both the father and mother have abandoned the child
- where both the father and mother have been declared to be of unsound mind by the court concern
- where the parentage of the child is not known

The JJ Act 2015 provides for an adoption system and for the first time provides for adoption by all persons irrespective of religion. It is applicable to orphan, abandoned and surrendered children. The JJ Act 2015 also applies to intra-family adoptions. Adoption under the JJ Act is a judicial determination and the adoption is done through a defined process which is scrutinized by the Central Adoption Resource Authority and is done with an adoption order of the court. In the exercise of their function in adoption cases, judges must keep in mind certain fundamental principles viz. the right of a child to have a family, best interests of a child and the principle of privacy and confidentiality.

DAY II

Session V

Theme - Age of Juvenility

Speaker: Prof. SP Srivastava

Chair: Justice Manmohan Sarin and Dr. Justice SS Phansalkar Joshi

The speaker discussed the evolution of the age of juvenility through the various juvenile justice act i.e. the Juvenile Justice Act, 1986, JJ Act 2000 and the JJ Act 2015. The age of majority presently continues to be 18 years. However, in the case of juveniles in the age group of 16 to 18 years who allegedly have committed heinous offences and are found to be physically and mentally mature and have sufficient understanding of the consequences of the act, then greater criminal liability is imposed on them and they are transferred to the Children's Court for trial.

The speaker discussed the jurisprudential evolution of the age determination inquiry to highlight the evidentiary standards in juvenile justice cases and the challenges in determination of age. Age determination was set on track with the JJ Rules 2007 which provided in Rule 12 for the process that is to be adopted in the age determination inquiry and the documents that can be relied on. It provided for a priority in the documents which made it easy for the JJB to undertake age determination.

The speaker then discussed the change in the law related to age determination with the enactment of the JJ Act 2015. Under the JJ Act 2015 age determination is no longer termed as an inquiry but is a process. Secondly, age determination process is required to be done only in cases of doubt of age. In most cases firstly the age is to be determined on the basis of appearance. In the JJ Act 2015 the sequence of documents has been changed with two documents being mentioned in a single clause. In view of this, the problem that arises is that when both matriculation and high school certificate are available, which are listed in a single clause in Section 12, then which one to rely on in case both are proved. It was also opined that age determination by appearance would be a rather risky exercise as appearances can be deceptive.

Session VI

Theme - Dispositional Orders under JJ Act

Speaker: Prof. Ved Kumari

Chair: Justice Manmohan Sarin and Dr. Justice SS Phansalkar Joshi

In this session, the speaker dwelt on the recent changes in the juvenile justice law and stated that the approach to delinquency has changed from reformation and rehabilitation to punitive. This change has occurred as a reaction to the Nirbhaya incident and led to a demand for punitive action. The general view is that if punitive action is not taken then the system is permissive to the juveniles who have committed offences. The speaker discussed the concept of restorative justice and stated that even with the JJ Act 2015, restorative justice remains an objective of the juvenile justice system. The difference between criminal justice and restorative justice was highlighted as follows -

- Criminal Justice
 - The focus is on the law that is broken
 - It is offender centric
 - It is punishment based
- Restorative justice
 - The focus is on the harm done
 - It is community centric

- The focus on repairing the harm done

The speaker discussed the science on brain development of adolescents and stated that in case of adolescents the ability of impulse control is developing and hence they indulge in risky and impulsive behavior with minimal consideration of the negative consequences of their act. The speaker discussed the orders that can be passed by the JJBs under Section 18. The speaker stated that there is no categorization of orders according to the nature of offence and hence the JJB must not limit itself to orders of institutionalization on the basis of the nature of offence. The approach to dispositional orders needs to be different from criminal justice. The JJB needs to look beyond the facts proving guilt of the juvenile and must take into consideration of circumstances of the juvenile that caused the offence and the factors that led the juvenile to commit the crime. The factors that need to be considered are the nature of the offence, the specific need for supervision or intervention, the circumstances of the juvenile as brought out in the social investigation report and the past conduct of the child. The speaker stressed on the principle of institutionalization as measure of last resort. The speaker also discussed the additional orders that can be passed by the JJB with the dispositional order such as schooling/ vocational training, therapeutic aid, restraining orders – not to visit certain places, de-addiction programme etc. It was expressed that in group counselling the group is not to be interpreted to mean a group of similarly situated juveniles but is the group (including family members, friends and all those connected to the juvenile) who are crucial to his rehabilitation. The speaker opined that in community service orders the community service must be linked to the nature of the offence so as to make the juvenile realize the gravity of the act done. The speaker also discussed the orders that can be passed in case of juveniles in the age group of 16-18 year old who are alleged to have committed heinous offence and stated that under Section 19 the order passed by the Children's Court should consider the needs of the child, should include an Individual Care Plan.

The conference concluded with the closing remarks by Justice Manmohan Sarin and Dr. Justice SS Phansalkar Joshi.

Strategies and Reform Proposition Emerged from the Programme

1. The participants emphasised on the approach and attitudinal shift towards juvenile justice cases and stressed on the use of positive words and actions to ensure a healthy development of the juvenile's personality and to ensure that the juvenile is suitably rehabilitated.
2. The participants suggested that a standard operating procedure for preliminary assessment should be prepared to assist the JJBs and to ensure uniformity in procedure adopted by the JJBs.
3. Orders should be based on the facts proving guilt but should consider the causal factors and the circumstances related to the commission of crime.

4. Preliminary assessment in case of child who chooses to remain silent should be done with the assistance of the juvenile's parents, family members, psychologists and counsellors.
 5. In case of offences which have not prescribed minimum punishment, the statute must be strictly interpreted and the offence would not be categorised as a heinous offence unless the minimum punishment of 7 years imprisonment is prescribed in law.
 6. Bail should only be refused on grounds mentioned and only when there are reasonable grounds based on sufficient evidence and materials which lead the JJB to believe that the grant of bail would juvenile will come into association of any known criminal or would be exposed to physical or psychological danger or would defeat the ends of justice.
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